

Docket No. F.D. 30400- 10/12/84 - PAGES-1871 -1929

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BEFORE THE

INTERSTATE COMMERCE COMMISSION

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In the Matter of: :

SANTA FE SOUTHERN PACIFIC CORPORATION : Finance Docket

-- CONTROL -- : 30400 et al.

SOUTHERN PACIFIC TRANSPORTATION :

COMPANY :

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Hearing Room A

12th & Constitution, N.W.

Washington, D.C.

Friday, October 12, 1984

The hearing in the above-entitled matter was convened, pursuant to notice, at 9:00 a.m.

BEFORE:

JAMES E. HOPKINS,

Administrative Law Judge

APPEARANCES AS HERETOFORE NOTED

C O N T E N T S

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Timothy F. Regan				
By Mr. Moates	1872			
By Ms. Mason		1873		
By Mr. Ratner		1874		
Ronald E. Seger				
By Mr. Hynes	1887			
By Mr. Batera		1889		
By Mr. Ratner		1899		
By Mr. Vineent MacKenzie		1908		
By Mr. Hynes			1916	
N. Harlen Pyles				
By Mr. Wilson	1919			
By Mr. Mason		1920		
By Mr. Batera		1931		
By Mr. Greenberg		1947		
By Mr. Ratner		1967		
By Mr. Vincent MacKenzie		1978		
By Mr. Wilson			1982	
By Mr. Ratner				1990
By Mr. Batera				1991

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P R O C E E D I N G S

1
2 JUDGE HOPKINS: Let's call the hearing to
3 order.

4 Call your next witness, please.

5 MR. MCATES: Thank you, Your Honor.
6 Applicants call to the stand Mr. Timothy Regan.

7 (Witness sworn.)

8 Whereupon,

9 TIMOTHY F. REGAN

10 was called as a witness by counsel for Applicants and,
11 having been first duly sworn, was examined and testified
12 as follows:

D I R E C T E X A M I N A T I O N

13
14 BY MR. MCATES:

15 Q Sir, would you please state your full name and
16 business address for the record.

17 A Timothy F. Regan, 5400 IBJ Freeway, Dallas,
18 Texas.

19 Q Mr. Regan, are you affiliated with a company?

20 A A.T. Kearny.

21 Q Sir, do you have before you a verified
22 statement of Timothy F. Regan, consisting of 30 pages
23 and a verification?

24 A Yes, I do.

25 Q Did you cause an errata to have been submitted

1 to this statement prior to the commencement of this
2 hearing?

3 A Yes, I did.

4 Q Is that statement, with the errata, true and
5 correct to the best of your knowledge, information and
6 belief?

7 A Yes, it is.

8 MR. MOATES: Your Honor, the witness is
9 tendered.

10 JUDGE HOPKINS: Thank you.
11 Who will be first?

12 CROSS EXAMINATION

13 BY MS. MASON:

14 Q Good morning, Mr. Regan. I am Mary Anne
15 Masch. I will be asking you very briefly some questions
16 for the Denver & Rio Grande Western Railroad. I'm going
17 to try to set a precedent for us this morning and really
18 keep it brief.

19 JUDGE HOPKINS: Good. That's the way to start
20 off.

21 BY MS. MASON: (Resuming)

22 Q Mr. Regan, in developing the conclusions you
23 reached as to the benefits that shippers would
24 experience as a result of this merger, did you interview
25 any shippers?

1 A Yes, I did.

2 Q How many?

3 A Two.

4 Q Who were they?

5 A Dresser Industries and Slumberger.

6 Q I'm sorry?

7 A Slumberger.

8 Q Would you consider them to be a representative
9 sampling of the shippers of heavy machinery over the
10 railroad?

11 A They were not meant to be a representative
12 sampling.

13 Q Okay. Thank you very much.

14 MS. MASON: I would just add that I did have
15 some additional questions related to the question of
16 competition, but in view of our stipulation yesterday I
17 will not ask them.

18 JUDGE HOPKINS: Thank you very much. That's a
19 good precedent. Thank you.

20 Mr. Ratner, let's see how you do.

21 MR. RATNER: Well, Your Honor, I can't --

22 JUDGE HOPKINS: I won't hold you to it.

23 MR. RATNER: I will make my usual effort.

24 CROSS EXAMINATION

25 BY MR. RATNER:

1 Q If you'll give me a moment, I'll see if I can
2 find your verified statement. My name is James Ratner.
3 I'm with the United States Department of Justice.

4 On page 3 of your verified statement, do you
5 see the last sentence? It reads "I have assumed that
6 shippers will recognize."

7 A Yes.

8 Q Did you specifically analyze or evaluate the
9 difficulty that shippers might face in achieving the
10 prompt and practical implementation of the programs
11 needed to realize the benefits you discuss in your
12 testimony?

13 A I did not.

14 Q On page 5, you indicate that, "based on my own
15 experience, not all operating improvements proposed by
16 the new rail merged system." Do you see that?

17 A Yes.

18 Q What specific experiences have you had with
19 the implementation of operating improvements by two
20 merged railroads?

21 A No operating experience at all.

22 Q You have been asked a bit about shippers. In
23 your number five down here, "a selected number of
24 interviews with key shippers." How was it determined
25 who a key shipper was?

1 A I think you heard Mr. Kloss testify that when
2 the interview sample -- well, not sample, but when the
3 interview list was developed, that Kearny selected a
4 number of clients, either current or recent clients,
5 whom we felt would be good sources of factual
6 confidential information.

7 Q Did you participate in that process?

8 A In the selection of the clients?

9 Q Yes.

10 A No, I did not.

11 Q You said you talked to two shippers?

12 A Yes, in addition to some receivers and several
13 associations.

14 Q Did any of the shippers you talked to express
15 either their opinion or concern that the merger might be
16 detrimental to their current price and service levels
17 for transportation?

18 A No, they did not.

19 Q Did you ask any of the shippers you talked to
20 if their price and service options would be reduced or
21 harmed by the merger?

22 A No, I did not.

23 Q On page 6, and it really spills over to the
24 top of page 7, where you say "The value of these
25 shipments require rapid transit time." Do you see

1 that?

2 A Yes.

3 Q Why is that?

4 A Well, a lot of the shipments are shipped FOB,
5 for one thing, which means that they belong to the
6 receiver the moment they're put on the train. So the
7 receiver is anxious to get his goods so that he can sell
8 it as quickly as he can.

9 JUDGE HOPKINS: Excuse me. Can you hear him
10 over there?

11 Would you speak up a little bit more.

12 THE WITNESS: Surely.

13 A lot of the large shipments, particularly the
14 high value shipments, are shipped FOB and belong to the
15 receiver the moment they're put on board a train.
16 Therefore, it's in the interest of the shipper and the
17 receiver to have them in transit as short a time as
18 possible.

19 Some of the shippers have, in addition to high
20 value shipments, they have some highly technical
21 defense-oriented equipment which is vital to our
22 national defense, and in that there's an interest in
23 them having short transit times.

24 BY MR. RAINEY: (Resuming)

25 Q I can understand why anybody -- somebody is

1 always going to own a piece of equipment and so there's
2 an interest in having short transit time. I was
3 interested in what it was specifically about the value
4 that made transit time a factor that you thought was
5 worth mentioning.

6 A Well, the construction industry, I can tell
7 you one thing: In the Dallas area, we are short of
8 cranes in recent years. The money lost just because of
9 the inability to supply a crane for a day or two days is
10 a significant amount of money, and so just that time
11 alone meant added value to the shorter transit time.

12 Q The last sentence in the first paragraph, page
13 7, you indicate that you treat heavy machinery as a
14 significant business because of the high value of the
15 commodity being shipped. Similar to what I was asking
16 before, why does the high value of the commodity mean
17 that it is a significant business?

18 A Well, certainly the people in that industry
19 think that they are a significant industry.

20 Q Does transportation play an important role in
21 the heavy machinery industry?

22 A Yes, it does.

23 Q On page 15, you refer to freight loss and
24 damage at the bottom.

25 A Yes.

1 Q With the commodities that you are referring to
2 in your testimony, does truck have a better record for
3 loss and damage than rail?

4 A I did not examine that.

5 Q Did you examine whether the Santa Fe Southern
6 Pacific merger will in fact improve loss and damage?

7 A I examined whether it could improve loss and
8 damage. yes.

9 Q On page 20, the bottom paragraph, you indicate
10 over 90 percent of the trucks and machinery movements
11 were in a single carload. Do you have that?

12 A Yes.

13 Q Do you know how many truckloads it takes to
14 accommodate a single rail carload?

15 A It depends on the commodity being shipped. If
16 it's tractors, it can be six tractors, depending on the
17 size of tractor. If it's a large crane, it will never
18 fit on a truck. So it depends on the individual piece
19 of equipment you're talking about.

20 Q So that I understand, are there any
21 commodities where there's a one to one correspondence?
22 That is, if it fits into a single carload it will also
23 fit into a single truckload?

24 A I don't know for sure, but I would assume so,
25 since trucking has made such incursions into the rail

1 traffic.

2 Q Can you briefly indicate to me the commodities
3 you have in mind that you said could not be moved by
4 truck?

5 A Well, there are large cranes which require
6 60-foot, 68 and 89-foot tie-down trailer cars, which
7 obviously will not fit on a truck. The roads won't bear
8 them.

9 Q You refer to average shipment size of 40 tons,
10 smallest of 16 and a largest of 75. Are trucks capable
11 of taking 75 ton shipments?

12 A They are not.

13 Q What is the highest weight that trucks are
14 capable of taking, if you know?

15 A I don't know.

16 Q On page 21, the bottom paragraph, first
17 sentence, you say: "The merger is expected to
18 strengthen the ability of those carriers, Southern
19 Pacific and Santa Fe, to provide service in handling
20 freight from Midwestern and Southwestern gateways to
21 California and Texas."

22 Which particular gateways do you have in
23 mind?

24 A Well, certainly the Mexican gateways in Texas,
25 and to California, the Los Angeles ports for export.

1 Q I don't want to belabor the point. The
2 problem I was having is that from the Midwest to
3 California and Texas and from the Southwest to
4 California and Texas, I'm familiar with a lot of
5 currently existing single line service, and I was
6 wondering if you could specifically identify for me
7 where these movements are where there isn't currently
8 existing single line service.

9 A I didn't study the various rail segments. I
10 studied the system as a whole.

11 Q On page 23, in the middle of the first
12 paragraph you say: "Improved transit time results in
13 real inventory carrying cost savings."

14 A Yes.

15 Q Do these cost savings vary considerably from
16 shipper to shipper?

17 A I can't tell. I just took that as an example
18 for some degree of quantification of something that was
19 very difficult to quantify.

20 Q Why is it difficult to quantify?

21 A Because the commodity in discussion had such a
22 poor performance period in the two years prior to it
23 that it was difficult to get an idea of the amount to be
24 shipped or that would be shipped, that had been
25 shipped.

1 Q So when you take this example of saving one
2 day in transit, is there a particular reason why you
3 picked one day?

4 A It was just an average I arrived at.

5 Q And the 25 percent carrying cost?

6 A That was arrived at in discussion with one of
7 the associations. I want to say Farm Equipment
8 Manufacturers Association, but I can't recall which.

9 Q How did you arrive at the one-day average?

10 A Partly discussion, partly research, partly my
11 own feeling after talking with some of the SFSP
12 managers.

13 Q On page 24 you talked about loss and damage.
14 Is it fair to say loss and damage is a big railroad
15 industry problem?

16 A It certainly is in this commodity.

17 Q For this commodity. Is the railroad industry
18 as a whole taking many different steps to try and combat
19 the problem?

20 A The industry as a whole has taken a lot of
21 steps, yes.

22 Q Is it fair to say that techniques are
23 constantly being developed by the industry to try to
24 deal with the problem?

25 A Each individual railroad is -- and as that

1 reflects the industry, or the industry reflects each
2 individual railroad, yes, that's true.

3 Q Towards the bottom of page 24 you refer to
4 high crime vandalism areas. So we'll know, where are
5 those high crime and vandalism areas?

6 A Well, one of them is Watts in Los Angeles, and
7 one of the proposed routing would allow the railroad to
8 avoid Watts, where there's a lot of stonings and
9 shootings.

10 Q Maybe we'll just drop that.

11 Q On the bottom of page 24, next to the number
12 one, you talk about the merger enabling greater use of
13 the railhead distribution concept. Why is that?

14 A It just will allow for consolidation of a
15 whole series of yards, interchanges, railheads. The
16 whole idea of a merger is to combine and consolidate.

17 Q Is there anything in particular -- you say the
18 traffic volumes will enable greater use. What is it
19 about the volumes that enables greater use?

20 A Well, they'll be able to classify longer
21 segments, put more cars in one shipment. There'll be
22 higher volumes within one shipment on a single flow. It
23 will just allow them to have -- to provide fewer
24 opportunities for vandalism by being able to consolidate
25 on interchanges and to implement some of the security

1 that both lines proposed.

2 Q On page 27 at the bottom, you refer to the
3 Midwest to Texas.

4 A Yes.

5 Q Is motor carrier currently unable to
6 satisfactorily serve the Midwest to Texas agricultural
7 equipment market?

8 A I don't know. I didn't study that.

9 Q On page 28, basically the same question: Is
10 motor carrier currently unable to satisfactorily serve
11 the Midwest to Mexico export route?

12 A Did not study that.

13 Q Next to the number three, "all new gateways."
14 Are Santa Fe and Southern Pacific -- have Santa Fe and
15 Southern Pacific shippers been currently unable to
16 expand their eastern and southeastern markets using
17 motor carrier? Do you understand the question?

18 A I don't know. I don't think so.

19 Q The sentence says: "The use of the new
20 gateways will provide Santa Fe and Southern Pacific
21 shippers an opportunity to expand their eastern and
22 southeastern markets." And what I'm asking you is, do
23 they currently not have that opportunity for expansion
24 using motor carriers?

25 A Again, I did not study truckers.

1 Q Is it fair to say that you have not evaluated
2 whether shippers will experience no harm, a little harm,
3 or a lot of harm from the anti-competitive implications
4 of this merger?

5 A I think it's fair to say all of the above.

6 Q You haven't evaluated --

7 A I haven't evaluated it.

8 Q Given that you haven't made that evaluation,
9 is it fair to say that your conclusion on page 30 that
10 farming and construction machinery shippers can expect
11 substantial benefits as a result of the Southern
12 Pacific-Santa Fe merger, that that conclusion does not
13 reflect a conclusion that shippers will on net be better
14 off as a result of the merger?

15 A I think I've heard this question before.

16 Q It wouldn't surprise me.

17 A I don't think that that's what that says at
18 all. It says that, given prudent management and the
19 normal expectations of a merged line, given what I had
20 to study, we would expect that some of these benefits
21 would occur.

22 Q But that conclusion makes no statement about
23 whether there may be severe or some effect on benefits
24 associated with anti-competitive aspects of the merger?

25 A That's right, it does not.

1 Q Did you evaluate whether any of the benefits
2 to the merger that you've discussed in your testimony
3 could be achieved without a merger of the Santa Fe and
4 Southern Pacific?

5 A We studied what was the proposed merger and
6 the merged system, that's all.

7 Q So the answer is no, you did not evaluate it?

8 A No.

9 Q Is it fair to say that your testimony should
10 not be read as a statement that the Santa Fe-Southern
11 Pacific merger is necessary to achieve the efficiencies
12 you discuss?

13 A I can't say that that's a valid -- my
14 statement was meant to be an analysis of the proposed
15 system as we studied it and it can't be read any other
16 way.

17 MR. RATNER: I don't think I have anything
18 else, Your Honor. That's all.

19 JUDGE HOPKINS: Thank you, Mr. Ratner.

20 MR. MOATES: No redirect.

21 I move the exhibit.

22 JUDGE HOPKINS: You're excused.

23 (Witness excused.)

24 JUDGE HOPKINS: Any objection?

25 (No response.)

1 JUDGE HOPKINS: It will be received into
2 evidence.

3 Call your next witness.

4 MR. HYNES: The Applicants call Mr. Ronald E.
5 Seger.

6 (Witness sworn.)

7 Whereupon,

8 RONALD E. SEGER

9 was called as a witness by counsel for Applicants and,
10 having been first duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. HYNES:

14 Q Would you please state your name and business
15 address for the record?

16 A My name is Ronald E. Seger and I'm a principal
17 of A.T. Kearny, management consultants, out of the New
18 York office on Third Avenue in New York.

19 Q Mr. Seger, did you prepare a verified
20 statement for submission in this proceeding?

21 A Yes, I did.

22 Q Do you have before you a volume numbered
23 SFSP-15?

24 A Yes, sir.

25 Q And directing your attention to the fourth

1 verified statement in that volume, is that the verified
2 statement which you prepared?

3 A That is.

4 Q Do you have any corrections or changes to make
5 to that statement?

6 A Two corrections. Would you refer to page 14.
7 Under the "revenue tons originated," would you please
8 cross off 582 and 593, because unfortunately those are
9 typographical errors that I didn't catch.

10 Q What should they read?

11 A They should read 93, and if you round off as I
12 use the rounding principle it should be 93168. And in
13 total carloads, 1,501,801.

14 Q And each of those numbers should have three
15 zeroes after it?

16 A I'm rounding upward, yes.

17 MR. REMES: Your Honor, would it be possible
18 for the witness to repeat those corrections?

19 JUDGE HOPKINS: Would you repeat them?

20 THE WITNESS: Sure. Under the 1979 column,
21 would you please change the first figure, which
22 currently reads 93,167,582. Would you cross off the 582
23 and change the 7 to an 8.

24 Under total carloads, which now reads
25 1,501,800,593, would you please cross off the 593 and

1 change the figure to 801.

2 BY MR. HYNES: (Resuming)

3 Q With three zeroes after the one?

4 A With three zeroes after the one. When you
5 look at the above, it says zero, zero, zero already.

6 Then would you please refer to page 29 under
7 B, "Loss and Damage." Once again, a typographical
8 error. Please change the two dollars to five dollars.

9 Q Are those the only corrections you have?

10 A Those are the only corrections I have.

11 Q And with those corrections, is this verified
12 statement correct and accurate to the best of your
13 belief?

14 A It is.

15 MR. HYNES: Your Honor, the witness is
16 available for cross.

17 CROSS EXAMINATION

18 BY MR. BATERA:

19 Q Good morning, Mr. Seger. My name is Victor
20 Batera. I represent KCS.

21 Mr. Seger, you testified on page 5 of your
22 verified statement that you relied on a number of, a
23 selected number of interviews with key shippers. How
24 many interviews did you conduct?

25 A Three.

1 Q Who did you interview?

2 A Safeway Stores in California, Tri-Valley
3 Growers in California, and A.G. Butt in San Antonio,
4 Texas.

5 Q What commodities do those companies deal
6 with?

7 A Food products.

8 Q The complete range of food products?

9 A Safeway and A.G. Butt would probably have well
10 in excess of 5,000 SKU's for the grocery industry.

11 Q Excuse me. What is an SKU?

12 A Stock keeping unit.

13 Q How did you select those three shippers?

14 A Out of a selection process of the many people
15 that I know within the industry, and I wanted a broad
16 mix of receivers. And Tri-Valley being a California
17 shipper, I wanted to talk to Tri-Valley.

18 On the other hand, I felt that, with 30 years
19 of business experience, it would validate some of my
20 thinking and so forth. So that's the reason for the
21 selection.

22 Q Why did you choose a number such as three?
23 Let me rephrase that. Did you consider interviewing
24 more than three shippers?

25 A It was considered originally, yes. I think

1 Mr. Kloss answered that yesterday on the reason for the
2 narrower selection.

3 Q Did you have any input into the decision as to
4 how many shippers to interview?

5 A Not into the total input, but I was part and
6 parcel of the group that met to decide which ones we
7 would select, yes.

8 Q Did you speak to any shippers who were opposed
9 to the merger?

10 A No.

11 Q Did you speak to any shippers who supported
12 conditions on the merger?

13 A No.

14 Q In preparing your analysis, did you consider
15 the views of any shippers opposed to the merger?

16 A Since I didn't interview any, I wouldn't have
17 any views.

18 Q Do I take it, then, that is no?

19 A That is right.

20 Q During the interview process with the three
21 shippers you did interview, did you expressly ask them
22 whether they would be content to rely solely on motor
23 carrier transportation?

24 A I think in the shipping environment, if you've
25 been a shipper, you don't necessarily look solely at

1 motor carrier nor solely at rail.

2 Q Well, did you ask them that?

3 A That they just look at over the road
4 carriage?

5 Q Did you ask them whether they would be
6 satisfied to rely solely on motor carrier transportation
7 for their transportation needs?

8 A No, frankly, because my 30 years in the
9 business would just say that that's a totally ridiculous
10 question to ask.

11 JUDGE HOPKINS: You mean for you or for him?

12 THE WITNESS: From any shipper, and for me to
13 ask.

14 JUDGE HOPKINS: Go ahead.

15 BY MR. BATERA: (Resuming)

16 Q Now, you state in your verified statement that
17 the interviews were designed to verify your
18 understanding on the probability of implementing the
19 anticipated benefits; is that correct?

20 A On the probability of implementing?

21 Q Yes. I'm referring to point five on page 5.

22 A Yes.

23 Q Do you mean by that that you reached
24 conclusions first on the anticipated benefits
25 independent of interviews and then went to confirm that

1 understanding with the shippers?

2 A Yes. I did my analysis first and then went
3 out to the shippers and receivers to validate some of my
4 opinions within the industry, yes.

5 Q Now, item two on page 5, you state that you
6 had interviews with Santa Fe and SF market managers who
7 understood the specifics of individual shipper
8 situations. What did you discuss with regards to
9 potential shipper benefits with these marketing
10 personnel?

11 A I wanted to get an understanding as to some of
12 their operating benefits that would take a look at some
13 improvements in the shipper environment, and some of the
14 things they identified, such as direct block trains,
15 more direct routes, better flexibility.

16 Q Do I understand you correctly that your
17 discussions with the railroad marketing people were
18 designed to determine what the operating changes were?

19 A Yes, to gain a better understanding as to what
20 their feeling from a management point of view would be
21 on some of the operating improvements, yes.

22 Q And how these marketing people thought that
23 the improvements would impact the shippers? Is that
24 also a part of your --

25 A Yes.

1 Q Now, still on page 5 but up at the top, the
2 carryover paragraph, you state that: "Not all operating
3 improvements proposed by the new merged rail system are
4 actually implemented when the merger is approved." Is
5 you see that language?

6 A I see that language.

7 Q What type of proposed operating changes are
8 not likely to be implemented?

9 A Since I'm not a management person of the
10 railroad, I'm not sure I can answer that question.

11 Q Do you have any operating experience?

12 A Not with any railroads; only as a shipper.

13 Q Now, on page 4 in the middle of the page you
14 refer to reductions in operating costs estimated to be
15 in excess of \$200 million. Do you see that language?

16 A Yes.

17 Q Where did you make that estimate?

18 A That was given to me by the railroads
19 themselves.

20 Q So that is not an independent study that you
21 made?

22 A No, no. I was not asked to do that. I wish I
23 had.

24 Q Turning to page 14, you state in the last
25 paragraph there that: "Overall, rail modal share

1 suffers from excess loss and damage." Do you see that
2 language?

3 A Yes.

4 Q Do you mean by that to suggest that rail has
5 excessive loss and damage as compared to other modes?

6 A I think every mode has excessive damage,
7 because once you receive a damaged product you can't
8 sell it and you lose out to competition.

9 Q So that particular statement is not intending
10 to compare modes?

11 A No, it really isn't. I think the rail
12 industry has excessive loss and damage, yes, I do.

13 Q Do other modes also?

14 A Other modes also have a lot of loss and
15 damage, not as extensively, however, as rail.

16 Q Did you do a study to that effect?

17 A I did not.

18 Q You did not?

19 A I did not. But as an experienced shipper in
20 the loss and claim damage filing with the different
21 shippers, I can assure you more claims are filed with
22 the railroads than they are with the over the road
23 carriers.

24 Q Did you do any study of the effects of
25 equipment supply, improved transit time, and similar

1 benefits on loss and damage claims?

2 A No.

3 Q How does California wine travel to the
4 Southeast and South?

5 A By rail and by truck.

6 Q Does it travel by TOFC at all?

7 A Yes.

8 Q In your experience, are TOFC rates better than
9 truck for this product and this corridor?

10 A I haven't looked at rate structures for well
11 over two years. My role in shipping was more as a
12 general manager and I allowed my traffic people to look
13 at that. I looked at total cost, total cost and service
14 and so forth.

15 Q So do you not know what the comparative rates

16 --

17 A On an actual rate basis, no. I can't sit here
18 and tell you which rate is which or that one is higher
19 than the other.

20 Q Did the elimination of interchanges
21 necessarily decrease handling?

22 A Yes.

23 Q Are you familiar with the KCS-Santa Fe
24 dedicated run-through service through Dallas, known as
25 the Big D?

1 A I was not until I found out that you were
2 going to cross-examine me.

3 Q So at the time of your study you were not
4 aware of that; is that correct?

5 A That's right.

6 Q Do you know whether loss and damage claims are
7 a problem on the Big D?

8 A Would you explain the Big D before I answer
9 that? Is the Big D an interchange?

10 Q The Big D -- well, let me ask you --

11 A The only big D I know is, you know, Dallas
12 itself.

13 JUDGE HOPKINS: That's a bad thing this
14 weekend.

15 BY MR. BAIERA: (Resuming)

16 Q Big D is just a designation for the
17 interchange, but it's a dedicated run-through service,
18 is what I'm getting at. The name is unimportant, but
19 what I'm referring to is the KCS-Santa Fe dedicated
20 run-through service through Dallas.

21 A Right.

22 Q Are you aware whether on that service loss and
23 damage claims are a problem?

24 A No, I'm not aware of it. But as a businessman
25 and as a shipper, if it's an interchange it's another

1 handling. And every time you have an interchange in the
2 transportation of merchandise, you have more damage.

3 Q Are you familiar with the term run-through
4 train service?

5 A Once again, not until I found out that you
6 were going to ask me that question, no.

7 Q What is your understanding?

8 A My understanding is that you merely change
9 crews. But then as a receiver or shipper, I couldn't
10 help but think -- and that's not part of the question or
11 part of the study -- but where do I have accountability
12 for reliable service? Who do I look to, the crew that
13 turned it over or the crew that received it? So I think
14 that's a situation as a shipper that I would have a
15 raised eyebrow.

16 Q Do you know whether annulled trains, annulling
17 trains, is a problem on the KCS-Santa Fe dedicated
18 run-through service through Dallas?

19 A Annulling trains? I don't think I quite
20 understand.

21 Q Cancellation of trains.

22 A Cancellation of trains?

23 Q Do you know one way or the other is the
24 question.

25 A No.

1 MR. BATERA: Thank you, Mr. Seger. No further
2 questions.

3 JUDGE HOPKINS: Thank you.

4 Mr. Ratner.

5 CROSS EXAMINATION

6 BY MR. RATNER:

7 Q Mr. Seger, my name is James Ratner. I'm with
8 the Department of Justice. Good morning.

9 A How are you.

10 Q If you could turn to page 3 of your
11 testimony. Did you specifically analyze or evaluate the
12 difficulties that shippers might face in achieving the
13 prompt and practical implementation of programs needed
14 to realize the benefits you discuss in your testimony?

15 A Now repeat that, please?

16 Q Do you see your sentence, the last sentence on
17 the bottom of page 3?

18 A Yes.

19 Q Where you say: "I have assumed shippers will
20 recognize this opportunity."

21 A Right.

22 Q Did you specifically analyze or evaluate the
23 difficulties most shippers might face in achieving the
24 prompt and practical implementation of programs that are
25 needed to realize the benefits that you discuss in your

1 testimony

2 A I don't think they're going to have any
3 problems in implementing. If some of these things come
4 about, my statement was that they will recognize the
5 opportunities and bring about some prompt actions.

6 Q Is the reason why you don't think that because
7 you specifically analyzed or evaluated any difficulties
8 that shippers might have?

9 A I guess I didn't analyze it, because I didn't
10 see the difficulty.

11 Q So the answer to my question is no, you didn't
12 specifically analyze or evaluate the difficulty?

13 A That's right.

14 Q On page 5, Mr. Seger, you refer: "Based on my
15 own experience, not all operating improvements." Do you
16 see that sentence there?

17 A Yes.

18 Q What specific experience have you had with the
19 implementation of operating improvements by two merged
20 railroads?

21 A I can't recall that I have any actual
22 knowledge previously, because frankly, there's been so
23 many different mergers that I can't point to any single
24 one. But as a shipper, I think it's realistic to say
25 that not all. On the other hand, there may be more.

1 Q Hopefully, if you just confine your answer to
2 my question, which is what your past experience was.

3 On page 15 of your testimony and spilling over
4 to the top of page 16, you indicate that rail
5 transportation is a key element in controlling the total
6 cost of raw materials to plants.

7 A Yes.

8 Q Why is rail transportation a key element?

9 A Because it's one of the services that offer
10 large shipments and one of the services that is required
11 to move a large volume of merchandise.

12 Q Now, towards the middle of page 16 under
13 "Industry Integration," you say: "The SFSP merged
14 system will allow large retail grocery chains to have
15 single line service between Texas and California."

16 A Yes.

17 Q Now, I believe you may have been asked, but if
18 you could just go over it again for me: Who are the
19 large retail grocery chains?

20 JUDGE HOPKINS: That he interviewed?

21 BY MR. RATNER: (Resuming)

22 Q That you were referring to here. I don't know
23 if you were asked specifically --

24 A I can go over many. A.G. Butt in San Antonio,
25 Grocery Supply in Houston, Texas, Certified Growers in

1 I.A., Ralph's Grocery. Do you want me to go on?

2 Q Do none of the companies that you have named
3 already have single line service from Texas to
4 California or between Texas and California?

5 A I didn't study each individual one, no. But I
6 think many of them are on the SP and many of them are on
7 the Santa Fe.

8 Q If you're on the Santa Fe, is it impossible to
9 get single line service between Texas and California?

10 A Well, it depends on whether the shipper and
11 the receiver is on the same line.

12 Q Is it correct to say you haven't
13 systematically and specifically examined how many of the
14 large retail grocery chains that you have talked about
15 here actually do not have single line service available
16 for any or a large portion of their shipments?

17 A You're right, I couldn't say that specific.

18 Q On page 18 under "Delivered Price," you say:
19 "Freight costs under a delivered price basis are
20 embedded in the price of goods."

21 A Yes.

22 Q Isn't it true that all freight costs, whether
23 under a delivered price or any other price, are embedded
24 in the ultimate price of goods?

25 A That's a difficult question to answer, now

1 that you ask it. I know there are some companies that
2 are not embedded, but one assumes when one is looking at
3 costs and margin and so forth that it could be, but it's
4 moreso in the delivered cost structure that you
5 definitely pass those transportation costs on.

6 Q So do I understand from your answer that you
7 are not sure, then, whether all transportation costs are
8 ultimately embedded in the final delivered price of a
9 product?

10 A I think the answer to that question is I'd
11 probably have to make a study of every manufacturer in
12 the country to answer as a whole.

13 Q Okay. How about for the shipments you have
14 testified about in your testimony today?

15 A I can testify on that on the basis of my own
16 experience with a couple of companies, in that most of
17 our freights were delivered price and we embedded them
18 in the cost, and like manufacturers would have the same
19 thing.

20 Q On page 25 of your testimony, you refer to
21 direct block trains operating between southern
22 California and Dallas-Fort Worth. Can trucks service --
23 is motor carrier available to effectively serve food and
24 beverage shippers between California and Dallas?

25 A Yes, many of them.

1 Q Did you investigate whether the merger will
2 reduce transit time below what trucks can currently
3 offer?

4 A No.

5 Q So it's possible, then, that in terms of what
6 the merged firm will operate, that it would not be any
7 improvement over what a shipper could currently get
8 right now from motor carrier?

9 A No, I think direct block trains can service a
10 market much faster than going through longer routes and
11 interchange. Now, let me give you an example.

12 Q I asked in comparison to motor carrier.

13 A Then ask the question again.

14 Q It's possible, isn't it, that the merger would
15 not create service that was faster in terms of transit
16 times than something a shipper could receive right now
17 from motor carrier?

18 A It's possible.

19 Q Can Southern Pacific food and beverage
20 customers use truck service to Kansas City, St. Louis
21 and Chicago?

22 A Yes.

23 Q Did you investigate whether the merger will
24 enable those shippers to reduce their transit times to a
25 time below what motor carrier can currently offer?

1 A No. I think it's reduced gateways, though, so
2 it probably would be.

3 Q Reduced below what motor carrier will offer?

4 A No, reduced what is currently, and I think
5 that's the key.

6 Q Why is that the key?

7 A Today in the shipper-receiver environment
8 transit time is a very, very large factor in carrying
9 inventory. I don't know if you read the Supermarket
10 News in the last three weeks, which is a food industry
11 paper.

12 Q I'm sorry to say I haven't.

13 A Well, Procter & Gamble has come out with a
14 program that the entire transportation environment had
15 better take a look at, and that is direct product
16 costing. And part of direct product costing is a major
17 element of inventory, and every single time a carrier --
18 and I don't care whether it's over the road or the rail
19 or what -- if he don't guarantee me the number of days,
20 then I may lose my brand's share of the market. My
21 competitor may take it up if they have a better carrier
22 environment.

23 Q Let me ask the question in another way, which
24 is, if transit time is important to a shipper and a
25 shipper can already receive a faster transit time from

1 motor carrier than it would be able to receive from the
2 merged carrier, why is this merger of any benefit to
3 that shipper?

4 A There are two other equations to that. One is
5 cost and one is reliability of service. So you compare
6 all three together.

7 Q Is rail more reliable than motor carrier?

8 A I would say there are some carriers in rail
9 that are very reliable. I can express one that took a
10 very marketing approach and changed a major
11 transportation shipper that was going to truck, came in
12 with a marketing direct block train that kept his market
13 share coming from that origin.

14 Q Is rail also less costly than truck from a
15 shipper's perspective?

16 A From a shipper's perspective, on a long haul,
17 yes.

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1 Q On Page 27, you indicate that, towards the
2 bottom, about the ninth line up, eighth line up from the
3 bottom, "The ability to reach eastern markets with
4 dependable service could offer current SP shippers the
5 opportunity to reach new customers."

6 A Yes.

7 Q Are SP customers currently unable to achieve
8 dependable service with motor carrier to reach those new
9 customers?

10 A No, they can reach it with motor carrier. I
11 think this gives them another competitive option.

12 Q Is it fair to say that you have not evaluated
13 that the shippers will experience no harm, a little
14 harm, or a lot of harm from the possible anticompetitive
15 implications of this merger?

16 A I was asked to look at the benefits, so I
17 think it is certainly fair to say that I did not look at
18 that. On the other hand, if I might add, my experience,
19 as a shipper, I don't see much harm.

20 Q On Page 31, you reflect your conclusion that
21 you believe this merger would provide significant
22 benefits to shippers of food and beverage products.
23 Does that reflect in any way any analysis or your
24 opinion as to possible harm to your shippers from the
25 merger?

1 A No.

2 Q Did you evaluate whether any of the benefits
3 of the merger that you have discussed in your testimony
4 could be achieved without a merger of the Southern
5 Pacific and the Santa Fe?

6 A No, I did not evaluate that.

7 MR. RATNER: That is all I have, Your Honor.
8 Thank you.

9 JUDGE HOPKINS: Mr. MacKenzie?

10 BY MR. VINCENT MAC KENZIE:

11 Q Good morning, Mr. Seger. I am Vincent
12 MacKenzie, representing the state of California.

13 When you interviewed -- the two shippers in
14 California, as I understand it, were Certified Growers
15 of IA and Safeways?

16 A Safeway Stores.

17 Q Did you know what their position was, or did
18 they have a position at that time in regard to the
19 merger?

20 A Not when I interviewed them, no.

21 Q Do you know whether or not they have the
22 position now?

23 A No, I haven't.

24 Q So when you prepared your study or prepared
25 statement, you did not know that those particular

1 shippers supported the merger?

2 A Supported the merger?

3 Q Yes.

4 A No, I don't know that they have supported it.

5 Q Did you know when you prepared your study or
6 prepared statement whether the applicants at that time
7 had supported the merger?

8 A No.

9 Q You did not know?

10 A I did not know.

11 MR. HYNES: Excuse me. Was the question
12 whether or not the applicant supported the merger? We
13 certainly do.

14 MR. MOATES: We will stipulate.

15 MR. WILSON: We will stipulate to that.

16 JUDGE HOPKINS: Mr. MacKenzie, you said
17 applicants.

18 MR. VINCENT MAC KENZIE: I am sorry.

19 BY MR. VINCENT MAC KENZIE: (Resuming)

20 Q At the time that you prepared your study,
21 obviously, you realized that the applicants were urging
22 merger between their carriers.

23 A Applicants meaning who?

24 Q The Southern Pacific and Santa Fe.

25 A Oh, oh, okay. No, I thought you were trying

1 to tell me Safeway. The applicants, yes.

2 Q Well, I shifted from the shippers' knowledge,
3 and then at the time you made your study and prepared
4 statement, you knew, of course, that the applicants were
5 supporting the merger?

6 A The applicants meaning -- of course, that is
7 when we were retained to do the study. I had better
8 listen very carefully to the words.

9 JUDGE HOPKINS: That is always a good idea.

10 BY MR. VINCENT MAC KENZIE: (Resuming)

11 Q Mr. Seger, are you familiar with the central
12 corridor called the Overland Route?

13 A The overrun route?

14 (General laughter.)

15 Q I think there are some parties that wish it
16 was overrun. The Overland Route, which is across the
17 central corridor of the United States called -- through
18 the Ogden gateway? Are you familiar with that?

19 A No, I am not.

20 Q You used to work for Libby McNeil. Is that
21 right?

22 A That's right.

23 Q Where was that located at?

24 A The headquarters?

25 Q Yes.

1 A Chicago.

2 Q You have had no experience then in California
3 Valley insofar as the shipment of goods are concerned by
4 rail or truck?

5 A Oh, I had a lot of experience. One of them I
6 wish I hadn't had was when I moved many rail cars out of
7 the state over Utah so they didn't have to pay the
8 taxes.

9 Q Okay. Let me ask you some questions about
10 your experience then. When you were a representative of
11 Libby, and if you had goods from the northern Sacramento
12 Valley, or let's call the area north of Fresno in the
13 Central Valley, would you feel it to your advantage of
14 having the option to be able to ship over the Overland
15 Route as well as southern routes?

16 A It is hard for me to be specific, because that
17 was 15, 16 years ago. On the other hand, I am sure that
18 if those existed, I had the options to make both.

19 Q And you were advantaged by that as a shipper?

20 A Once again, it is hard, because, you know, it
21 was 17, 18 years ago, but I would say if you say that I
22 had the advantages, I would assume I would have had to
23 have them.

24 Q If you had today, if you were located north of
25 Fresno in the Central Valley of California as a shipper,

1 and you had the choice, the choice is available to you,
2 of either single system service to the southern route to
3 the midwest, Chicago, and east, would you also want to
4 have the option of being able to ship over the Overland
5 Route?

6 A I think I would want to take a look at all my
7 options before I make a decision which way I am going to
8 ship, whether it is over the road, whether it is a
9 northern route, whether it is a southern route. But I
10 would want to look at all options available to me.

11 Q If the Overland Route provided you, even
12 though it may require some interlining of rail carriers,
13 if it provided comparable rates and comparable service
14 to the southern route, would you not prefer to have that
15 as an option for choosing your particular carrier?

16 A Therein lies my problem. I am sort of a
17 believer that I would like to get something from Point A
18 to Point B as quickly as possible, and it is hard for me
19 to understand when you have an interline or an
20 interchange versus a direct that you can get it there as
21 fast.

22 Q Okay. I was assuming for the purpose of the
23 question that comparable rates and service, including
24 transit time, was available over the Overland Route.

25 A If that is the case, let's assume that the

1 costs are the same.

2 Q Yes.

3 A You are taking the same number of days to get
4 it from Point A to Point B. Then my next judgment would
5 be, yes, those two things are good, but then I am going
6 to track your performance, because Day One you are going
7 to fall out of bed and you are going to meet with me to
8 find out why you are falling out of bed.

9 Q And that would be true for the single system
10 southern corridor, wouldn't it?

11 A It would be true for any carrier, whether it
12 is the over the road or what.

13 Q When you were with Libby, did you ship canned
14 goods by full boxcar load?

15 A Yes, full boxcar trailerload.

16 Q For shippers in the Central Valley of
17 California who today are shipping full boxcar load of
18 canned goods, do you know whether or not they are going
19 to be disadvantaged by this proposed merger?

20 A I would almost say that there is no shipper in
21 California shipping by boxcar exclusively, and I say
22 that strictly from an experience factor with two
23 companies, Cheeseborogh Ponds, where we had some large
24 producing facilities, used a million pound shipment rate
25 for our raw ingredients, but at the same time shipped by

1 truck. I think that most shippers have taken advantage
2 of every single transportation option they have.

3 Q I understand that, Mr. Seger, and in fact my
4 question, although I did not state -- I wasn't assuming
5 that these shippers that ship by full boxcar load didn't
6 have available and did not take advantage of other modes
7 of transportation, including truck.

8 A Yes. All right.

9 Q I am saying that if those shippers will have a
10 reduced opportunity for shipping full boxcar load
11 postmerger, will that serve as a disadvantage.

12 A If that production came about, but I fail to
13 see where the reduction is going to come about.

14 Q The last question I have has to do with your
15 testimony on one of the benefits that you feel is
16 possible to achieve as a result of this merger. That
17 is, loss in damage, reduced loss in damage claims.

18 A Right.

19 Q On Page 29, you indicate that "If just," and
20 then it was changed, well, it was corrected to "\$5 per
21 car saving in damage could be accomplished as a result
22 of this merger for shipments originating from
23 California. These savings would amount to," and then I
24 assume that \$500,000 figure is the correct figure. The
25 assumption was if it could happen.

1 Did you make a study or do you have knowledge
2 that that savings can in fact take place as a result of
3 this merger?

4 A No, but I -- could I just amplify on that a
5 little bit? The average selling price for the industry,
6 wholesale selling price is \$12.50. Tuesday I was at the
7 Mayflower Hotel presenting to the total food industry,
8 because I managed a project for them to try to find out
9 how we can come about with some improvements in the food
10 industry.

11 And the largest single component in the
12 shipping container movement from the end of the
13 manufacturing line to all the distributors, the largest
14 single component where there are opportunities in
15 savings to control the price of the retail product being
16 sold to the consumer is one of damage.

17 And if we could just save just a half a case,
18 and \$5 a car is less than half a case, and that was an
19 assumption, which I firmly feel we can, I think there
20 are those potentials there.

21 Q My question, Mr. Seger, directly, was, did you
22 make a study or do you have within your knowledge the
23 specific steps that could be taken by the railroads to
24 reduce their loss and damage claims.

25 A Specifics, one of the things that I did

1 consider is the many interchanges. Every time you hump
2 a car it is prone to damage, so but no, I did not make a
3 specific study.

4 MR. VINCENT MAC KENZIE: Thank you. That is
5 all.

6 MR. HYNES: I just have one or two questions
7 on redirect.

8 REDIRECT EXAMINATION

9 BY MR. HYNES:

10 Q Mr. Seger, you earlier testified that you
11 conducted several interviews with the shippers in
12 preparing your testimony.

13 A Yes.

14 Q Did you speak to anyone who is a receiver of
15 traffic?

16 A Well, A.G. Butt is a receiver and a shipper as
17 well as Safeway is a receiver and a shipper.

18 Q I would also like to direct your attention to
19 the cross examination by Mr. Ratner of the Department of
20 Justice, specifically to your discussion concerning the
21 relative transit time between truck and rail on various
22 movements.

23 To the extent that this merger eliminates
24 interchanges, improves transit time, and so forth in the
25 manner discussed in your testimony and in the operating

1 plan, won't that benefit shippers of food products?

2 A It would definitely benefit. I would like to
3 introduce an example which I think is an excellent,
4 excellent example of how it would benefit.

5 Q Why don't you tell us about that?

6 A Kellogg Company out of Battle Creek, Michigan,
7 has traditionally been a heavy rail shipper into the
8 east coast. The over the road carrier was starting to
9 penetrate into the share of market.

10 And I have got to say that Conrail came up
11 with one of the greatest opportunities for direct block
12 cars where every Friday they will load a direct block
13 car, and it would be in the east on Sunday night, and
14 delivery to the receivers on Monday and Tuesday.

15 To me that is a perfect example of the
16 opportunities on direct block shipments with guaranteed
17 deliveries. That is one of the greatest marketing
18 opportunities that I have heard the railroad industry
19 doing in years.

20 Q And did that innovation by Conrail enable
21 Conrail to take traffic away from trucks and put it back
22 on the rails?

23 A It enabled them to maintain their share of
24 market with that particular shipper. Also, I think many
25 of you if you know the industry have seen the large

1 shippers like General Mills and others who used to be
2 traditionally rail shippers are going over the road.
3 Why are they going over the road? Reliability of
4 transportation, transit time, interchange, and so
5 forth. I think these are the opportunities you have to
6 look at in the rail industry.

7 Q One final question. A point of
8 clarification. This again relates to the cross
9 examination by the Department of Justice, and I believe
10 that you testified that on the longer hauls from a
11 shipper's perspective that rail is relatively less
12 costly than truck for the longer hauls. Do you remember
13 that discussion?

14 A Yes.

15 Q Did you have in mind there the shipper's total
16 logistics cost, or just his transportation cost?

17 A Just his transportation cost, because you had
18 to take some of the other points in as far as inventory,
19 investment cost, administrative costs, and so forth, and
20 every day's transit that you take is another \$34.25 that
21 you are costing that particular shipper.

22 MR. HYNES: Thank you. I have no further
23 questions, Your Honor.

24 JUDGE HOPKINS: Any further questions?

25 You are excused, sir.

1 (Witness excused.)

2 MR. HYNES: Your Honor, at this time I move
3 the admission of Mr. Seger's statement.

4 JUDGE HOPKINS: Any objection? It will be
5 received in evidence.

6 Call your next witness.

7 MR. WILSON: Your Honor, the applicants call
8 as our next witness Mr. Harlen Pyle.
9 Whereupon,

10 N. HARLEN PYLE

11 was called as a witness, and having been first duly
12 sworn, took the stand, was examined, and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. WILSON:

16 Q Mr. Pyle, are you employed by A.T. Kearney
17 Management Consultants?

18 A I am.

19 Q Could you state your full name and address for
20 the record, please?

21 A My name is Harlen Pyle. My address is 222
22 South Riverside Plaza, Chicago, Illinois.

23 Q In connection with this proceeding, did you
24 prepare an 83-page verified statement signed by you on
25 the 9th of March, 1984?

1 A I did.

2 Q Do you have any corrections or modifications
3 you would like to make to that statement at this time?

4 A Two very brief changes on Page 20. If you
5 will refer to the third line of the second paragraph,
6 the structure of the industry following tons of borax,
7 and if you will insert "(B2O3)" refers to boric oxide,
8 the mineral content of the borax ore.

9 Also, the same change in the last paragraph,
10 first line, following "Of our total borax production,"
11 insert "(B2O3)".

12 Q With those changes, is your testimony true and
13 correct to the best of your knowledge and belief?

14 A It is.

15 MR. WILSON: I tender the witness for cross
16 examination.

17 JUDGE HOPKINS: Thank you. Who will start?

18 CROSS EXAMINATION

19 BY MS. MASON:

20 Q Mr. Pyle, I am Mary Anne Mason from the Denver
21 and the Rio Grande Western Railroad.

22 My first question is, in developing your
23 conclusions as to the benefits that could accrue to
24 shippers from this proposed merger, did you directly
25 consult or interview any shippers of bulk commodities?

1 A I interviewed one shipper, and that was one
2 more than I really needed.

3 Q Who is that, please?

4 A That was Kimberly Clark.

5 Q I take it then you made no effort to interview
6 a representative sampling of all commodity shippers?

7 A A representative sample is almost a misnomer.
8 One of the things we have discussed is, each of us as
9 commodity analysts in this situation got to make our own
10 judgments regarding our statements. One of the
11 judgments I made fairly early was that interviews were
12 not necessarily going to be an important part of putting
13 together this statement.

14 Q So the answer is no. Thank you.

15 During the course of your analysis, did you
16 evaluate whether any or all of the bulk commodity
17 shippers would, after the proposed merger, have
18 available to them alternative services offered by
19 competing railroads?

20 A As part of my analysis, my concern was that
21 they would have alternative services from competing
22 transportation options. The fact that they may not have
23 alternatives from competing railroads is not an
24 important aspect of identifying the benefits.

25 Q But you did not specifically evaluate whether

1 they would have alternative railroad service options?

2 A Specifically, no.

3 Q Let me first ask you to turn to Page 22 of
4 your verified statement. On that page you indicate for
5 us that the combined Santa Fe Southern Pacific system
6 will participate in virtually all of the borax shipments
7 in the United States. Is it fair to say then from your
8 verified statement that the Santa Fe and Southern
9 Pacific would monopolize the borax shipments in this
10 country?

11 A Not at all. Monopoly is simply not a term
12 that would be legitimate in this sense. You have got to
13 understand the nature of the borax shipments. In fact,
14 the situation following the merger if it were
15 implemented is not going to change the conditions
16 regarding the transportation from a rail standpoint for
17 these two shippers.

18 Generally what you are talking about is a U.S.
19 Borax that in fact represented 95 percent of the market
20 for domestic borax, and a Kerr-McGee that represents 5
21 percent of that market. What we are talking about is a
22 situation where we can improve the services for both of
23 those companies, but generally not impact at all their
24 general transportation needs or uses as they have now,
25 and in fact they support that in their verified

1 statement supporting the merger.

2 Q But what you are telling us is that the Santa
3 Fe and the Southern Pacific currently compete for those
4 two shippers?

5 A Not at all. The Santa Fe originates the U.S.
6 Borax shipments. The SF originates the Kerr-McGee
7 shipments at Trona. They don't have access as
8 originating shippers, the SF does not have access to
9 U.S. Borax, and vice versa. Therefore they in fact do
10 not compete.

11 Q Mr. Pyle, together they will have virtually
12 all of the borax shipments? Is that correct?

13 A Together they will in fact originate the --
14 virtually all of the rail shipments of borax in the
15 country.

16 Q Thank you.

17 Do you believe that in this situation the
18 Santa Fe and Southern Pacific would offer the same
19 quality of service that they might otherwise offer? For
20 example, you have indicated that you thought that the
21 merged system would offer to supply a greater proportion
22 of covered hopper cars for use by the borax shippers.

23 Can you explain why the Santa Fe and Southern
24 Pacific would wish to do this?

25 A Absolutely. To answer your question, your

1 first question, the service, the incentive to provide
2 service will probably improve. In regards to the
3 general equipment needs, as you note, that the borax
4 shippers provide a substantial portion of their own
5 fleet. Generally, what we see when we work with
6 shippers across almost all commodities is a situation
7 whereas they don't necessarily want to provide that
8 equipment. It is an expense that they can do without.

9 What we are looking at here is how a combined
10 system through certain efficiencies of operations,
11 especially in and around Los Angeles, where U.S. Borax
12 especially exports a substantial amount of their
13 production, can improve the utilization of their fleet,
14 leading to a fleet reduction and a replacement of the
15 combined fleets which will increase the number of
16 covered hoppers and benefit the borax shippers along
17 those lines.

18 Q Mr. Pyle, is it the case that covered hopper
19 cars can be used for other commodities?

20 A They can be used for a wide range of
21 commodities.

22 Q So it is possible that the Santa Fe and
23 Southern Pacific Railroad could choose to use its
24 additional available cars for other commodities? Is
25 that correct?

1 A It would certainly lead me to believe that.
2 Prudent management would say that you would want to
3 utilize your resources wherever they are best utilized.

4 Q Thank you. On Page 25 of your statement, you
5 suggest that the Santa Fe and Southern Pacific might
6 wish to enter into a long-term contract with the U.S.
7 Borax Company. Can you explain why such long-term
8 contract would be attractive to the Santa Fe and
9 Southern Pacific in view of the fact that it will be
10 guaranteed all of that traffic?

11 A Well, we talk about guarantee of all of that
12 traffic. All of that traffic is all of that rail
13 originated traffic. What is happening with borax, as is
14 happening across most of my commodities, and I would
15 imagine many others, is that the motor carriers are
16 beginning to make an impact on the transportation of
17 these commodities.

18 The benefit is from the carrier's standpoint
19 that if he can enter into a contract and develop
20 something that is beneficial for both parties, including
21 himself, obviously, he has a certain amount of
22 guaranteed revenues over some period of time, whatever
23 it may be, which is very important.

24 Number Two, he can essentially address a
25 situation where his position from the standpoint of

1 controlling traffic over a period of time and having
2 access to that traffic will be a benefit to him.

3 Q Mr. Pyle, currently Santa Fe and Southern
4 Pacific separately have essentially all the rail traffic
5 moving in the borax commodities. Why would there be an
6 additional incentive after the merger for long-term
7 contracts to be entered into?

8 MR. WILSON: Object. I think this has been
9 asked and answered often.

10 JUDGE HOIKINS: One of the problems is, I
11 think he goes on expansively, and within that group of
12 answers it is difficult for her to pick out the
13 particular point. Can you answer?

14 THE WITNESS: I will answer very distinctly.
15 The incentive is to guarantee traffic over a period of
16 time and the revenue generation that goes along with
17 that traffic in a competitive transportation
18 environment.

19 BY MS. MASON: (Resuming)

20 Q On Page 14 of your verified statement, you
21 indicate that among the operating efficiencies that will
22 result from the merger of the Santa Fe and the Southern
23 Pacific is the availability of multiple main line
24 routes. In your experience, is it to be expected that
25 in the case of a merger such as this, which is

1 essentially a parallel merger, both former main lines
2 will continue to enjoy main line service?

3 MR. WILSON: Your Honor, I have to object to
4 counsel's characterization that this is essentially a
5 parallel merger.

6 JUDGE HOPKINS: Well, we will deal with that.
7 I will allow -- I will sustain the objection
8 specifically. That is something we will have to deal
9 with in the case itself. Go ahead.

10 BY MS. MASON: (Resuming)

11 Q Could we turn now to Page 58 of the verified
12 statement? On that page of your statement you indicate
13 that presently lumber traffic from Oregon is shipped by
14 the Southern Pacific using the Overland route, which is
15 the Southern Pacific to Denver and Rio Grande to the
16 Santa Fe.

17 After the merger, you state, and I quote, "The
18 combined rail system will enable western lumber shippers
19 to access the east through more logical gateways and to
20 eliminate unnecessary circuitry and interchanges."

21 To achieve this, I assume that you mean that
22 the combined system will route Southern Pacific's lumber
23 over the Santa Fe's southern corridor route. Is that
24 correct?

25 A Not necessarily. It is my understanding that

1 in fact the intention is to leave the Overland Route
2 open via the Ogden gateway. In fact, what this relates
3 to is the general opportunity of lumber traffic moving
4 to gateways, perhaps New Orleans, perhaps Memphis, that
5 right now don't have a good access even via the Overland
6 Route that will enable those shippers to access eastern
7 markets which as we are all aware they have lost
8 historically.

9 Q Are you familiar with the marketing practices
10 of small lumber producers? Specifically, are you aware
11 that some of them, since they do not have warehousing
12 capacity, often are interested in sending a shipment off
13 before it is sold, and hope to sell it along the route?

14 A I understand that approach to marketing, and
15 my understanding is also that that practice has declined
16 dramatically in the last few years.

17 Q Assuming that this is the case, would you
18 expect that small lumber shippers who have this
19 particular problem with warehousing would be more
20 interested in maintaining the availability of
21 alternative routes than they are in avoiding circuitry
22 and additional interchanges? 6

23 A Well, you know, if what you say is true, it
24 sounds to me like they would rather keep the circuitous
25 routings.

1 Q Did you interview any small lumber shippers?
2 I gather not.

3 A I did not.

4 Q My final question. On Page 59, could you
5 explain to us the basis for the assumption that you make
6 that shippers moving lumber over the Southern Pacific
7 from Oregon to Southern California, Arizona, and Texas
8 can expect to save up to 24 hours in transit time?

9 A Absolutely. Generally it would be reasonably
10 obvious on the lumber side of it. The predominance of
11 the lumber traffic moves -- it originates SP in Oregon.
12 The primary markets for that lumber or the single
13 primary market is probably Southern California. What
14 has happened is that there has been a significant change
15 or movement towards intermodal alternatives for that
16 traffic.

17 Now, one of the issues associated with that
18 shift is service, and specifically any kind of service
19 related to non-SP destinations where interchanges are a
20 factor. Specifically there are going to be some
21 operating changes that will certainly impact that flow
22 and make the service that much quicker and more
23 flexible, which is very important.

24 We are going to be generating or as is my
25 understanding there will be a new Eugene-Parstow train

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1 that will move in that area, and obviously will be
2 primarily, or a big factor in that train will be forest
3 products traffic developing in the Oregon area,
4 originating in the Oregon area and moving into Southern
5 California. I think that will have an impact, because
6 what we are talking about is basically a train that will
7 bypass all the yards.

8 Number Two -- and I will make this very quick
9 -- Number Two is, we have a number of yard
10 consolidations and realignments taking place which have
11 got to be a factor, and if you understand the nature of
12 boxcar traffic generally, and that is what we are
13 talking about in the forest products industry, you are
14 talking about single carload traffic that has a number
15 of interchanges.

16 If there are more than one railroad involved,
17 obviously, and obviously yardings that slow that traffic
18 down, and those will be to a certain extent eliminated,
19 and obviously the operating witness will be better
20 prepared than I am to elaborate on that, but that is a
21 factor that is very important. That is how I arrived at
22 this number.

23 Q Does that mean that you independently
24 evaluated the operating changes and found this number to
25 be --

1 A What it means is that if, as I know you have,
2 in the beginning of our statement we indicate we rely --

3 Q So you did not independently --

4 A This is directly from the operating plan,
5 which I did not independently help create or evaluate.

6 MS. MASON: Thank you. That is all.

7 JUDGE HOPKINS: Thank you.

8 Who will be next?

9 BY MR. BATERA:

10 Q Mr. Pyle, my name is Victor Batera. I
11 represent the KCS. What commodity does Kimberly Clark
12 deal in?

13 A Well basically, they deal in three. They deal
14 in inbound pulp and secondary fiber or waste paper.
15 They deal in outbound sanitary products, sanitary paper
16 products.

17 Q Where are their facilities located?

18 A Well, they have a number of facilities located
19 around the United States, but in regard to the impact or
20 where they would be at issue here is, they have a paper
21 plant in Fullerton, California. They also have a plant
22 in Memphis, Tennessee, that is open to SP switching.

23 Q Did you ask Kimberly Clark whether it would be
24 satisfied to rely solely on motor carrier as the
25 transportation option?

1 A Well, in so many words, no, but in fact if you
2 look at the statistics you find out that they to a
3 significant degree do rely on motor carrier
4 transportation, especially for their outbound products.

5 Q Is it fair to say that the commodities, and I
6 believe there are eight of them that you studied, are
7 rail dependent for transportation?

8 A You know, what is interesting, generally, no.
9 And if I might indicate lumber historically yes,
10 currently no. It is primarily motor carrier moved.
11 Paper historically yes and currently no, primarily motor
12 carrier. Aggregates, 98 percent motor carrier. Potash
13 historically primarily rail, now up to 40 percent of the
14 domestic potash movements motor carrier.

15 Sulfur, same situation, predominantly motor
16 carrier. Borax, rail mainly, motor carrier making much
17 greater inroads. Copper generally rail on the ore side,
18 the mine side, and the concentrate or the anode side
19 refinery, no. Have I covered them all?

20 Q Did you say iron and steel?

21 A Iron and steel, predominantly somewhere rail
22 share I believe is somewhere in the 30 percent range
23 right now.

24 Q Could you turn to Page 17 of your verified
25 statement, please?

1 Look at the last paragraph, and tell me, in
2 light of the statistics that or the description of
3 statistics that you have been giving me, what do you
4 mean by "The commodities included in my statement will
5 require reliable, economic rail transportation
6 services?"

7 A Well, there are several key words. Obviously,
8 one is "will." A primary -- this commodity group is a
9 little bit different from the commodity groups that the
10 other Kearney witnesses have addressed.

11 Implicit in this analysis in what are
12 basically a generic commodity group, and that is part of
13 the reason they were put together, is something that
14 says that the market for these commodities and the
15 buying decisions of the customers for these commodities
16 will be based at least in part, and a fairly large part,
17 on delivered price and the availability of these
18 products or commodities.

19 Implicit in that is something that says, if
20 the merger, if the combined system is going to benefit
21 the shippers of the commodities included in my
22 statement, one of the things it should do is, through
23 the service related benefits, it should help those
24 shippers expand, maintain, address their marketplace
25 more effectively than they could without it.

1 And what this statement says, in effect, is
2 that perhaps, yes, the shifts have occurred. Yes, the
3 majority of a number of these commodities moves via
4 motor carrier.

5 But if the combined system can help rail
6 maintain a competitive stance and therefore maintain a
7 position where these commodities can in fact serve their
8 markets or their customers more effectively, the
9 shippers of these commodities, then yes, that is a
10 benefit, and that is what that sentence addresses.

11 Q Do you believe that for these commodities that
12 you have studied, it is adequate to have truck as
13 opposed to rail?

14 A For the commodities that I have studied, there
15 are instances, obviously, where truck appears to be the
16 preferred mode.

17 Q In the description of the increasing truck
18 share for a number of the commodities that you have just
19 gone through, have you made any analysis to distinguish
20 between long haul and short haul share?

21 A No. And I will tell you why.

22 JUDGE HOPKINS: Do you want to know why?

23 MR. BATERA: No. At this point, if your
24 counsel wants to bring that up on redirect, that will be
25 sufficient.

1 BY MR. BATEPA: (Resuming)

2 Q Have you studied the relative shares between
3 rail and other modes in any particular corridor?

4 A The answer is no. But that is not entirely
5 true, either.

6 Q For purposes of this statement --

7 A For the purposes of this statement, the answer
8 is no. Historically we have made those studies.

9 Q Now, on Page 5 of your verified statement, you
10 state that not all operating improvements proposed for
11 new merged rail systems are actually implemented in your
12 experience. Is that correct?

13 A Well, my experience probably doesn't
14 necessarily dictate that that's the case. My reason
15 would dictate that.

16 Q Did you have any operating experience from the
17 rail end?

18 A I do in fact have some.

19 Q What is that?

20 A Well, for about eight months during my college
21 years I was a trainman for one of the major midwestern
22 railroads.

23 Q Anything else?

24 A Well, I have also been a trackman on several
25 different occasions. Good wages, you know.

1 Q On Page 12, in the last full paragraph, you
2 state that "Shippers will benefit from improvement in
3 operating efficiencies which will increase car
4 utilization." Is that correct?

5 A Yes, that is correct.

6 Q What is the basis for your statement that
7 operating efficiencies will improve?

8 A I think that perhaps the best way to address
9 that is a couple of examples. A good example is
10 sulfur. A major sulfur movement, the major sulfur
11 movement on either of the systems is a unit train
12 movement from Rustler's Springs, Texas, to the port of
13 Houston basically, or a facility around Houston.

14 Currently that is all private equipment.
15 Currently it has to go through basically a two
16 interchange situation. It has to go to the SP or rather
17 it goes to the Houston Belt Terminal Railroad and then
18 it goes to the port railroad that serves the facility.

19 Historically, as I understand it, the Houston
20 Belt Terminal Railroad has been somewhat of a
21 bottleneck. By -- the combined system in fact will
22 allow the movement to bypass the Houston Belt Terminal
23 and in fact should improve the transit time on the train
24 fairly significantly. That leads to greater utilization
25 of the equipment or in fact reduced equipment

1 requirements. That is an important consideration for
2 any shipper operating his own fleet. Borax is the same
3 situation that we talked about.

4 Q What do you mean by the term "operating
5 efficiency?"

6 A Operating efficiency are basically some of the
7 things that I talked about earlier. What happens is,
8 operating efficiencies exist when you can, Number One,
9 eliminate interchanges, Number Two, eliminate yardings.
10 Generally, I am not an operating expert, as you may have
11 gathered by my experience, but generally in yard work
12 that I have been involved in what happens is, you come
13 in, and especially if you are in any kind of single car
14 service, you do a switching operation.

15 There is some lag time within that switching
16 operation. If you have an interchange, you have in fact
17 two switching operations, the terminating carrier at an
18 interchange and then the junction carrier at that
19 interchange. Two switching operations. You eliminate
20 those switching operations.

21 Normally you eliminate at least an eight-hour
22 switch delay, and for anybody who operates private cars,
23 utilization is the key.

24 Q Am I correct that you relied on the operating
25 personnel of the applicant railroads to describe what

1 the improved efficiencies would be?

2 A That is correct.

3 Q And you made no independent study of that?

4 A I made no independent study of that.

5 Q What is the basis for your statement that
6 Houston is a major bottleneck?

7 A Well, generally that is basically something
8 that seems to be well known in the industry. I have
9 heard it historically but in fact do I have any specific
10 knowledge of that or have I made a study of that? The
11 answer would be no.

12 Q With respect to your discussion on -- I guess
13 it runs from Pages 15 to 18, your discussion of
14 contracts. Is it fair to say that in determining
15 whether to enter a contract, a shipper and the carrier
16 each has to weigh certain risks and benefits?

17 A I think that is a fair statement, yes.

18 Q Would a railroad subject to effective
19 competition have more incentive to enter contracts than
20 one that is not so subject? Is that a fair statement?

21 A Not necessarily.

22 Q Why not? What is wrong with that statement?

23 A Well, if you read the benefits to the carrier,
24 generally they exist whether there is a transportation
25 competitive environment there or not. Specifically, the

1 guaranteed revenue as we have discussed, very
2 important. Protection against business volume
3 variations to the extent that that is one of the
4 conditions of the contract, that is important.

5 Planning, planning obviously, I would say, is
6 more important than ever before, especially when you
7 think of resource allocation and resource utilization,
8 obviously an important aspect of it. Those are probably
9 the two keys, and I think they exist regardless of the
10 competitive environment of transportation.

11 Q Is there anything else, or does that complete
12 your answer?

13 A Oh, depending on the specific instance, one of
14 the things you realize before too long is that each
15 instance has certain benefits and risks in and of
16 themselves, but generally that is what exists.

17 JUDGE HOPKINS: Let's take a 15-minute
18 recess.

19 (Whereupon, a brief recess was taken.)

20 JUDGE HOPKINS: Back on the record.

21 MR. WILSON: Your Honor, as a preliminary
22 matter, there was a request during the cross examination
23 of Mr. Liba for the COFC traffic flow from Southern
24 California to the Texas coast. Mr. Liba prepared the
25 numbers that he used. I have a handwritten sheet for

1 Mr. Liba, and I will pass it on to counsel for KCS at
2 this time.

3 JUDGE HOPKINS: They are the ones that
4 requested it, weren't they?

5 MR. WILSON: Right.

6 JUDGE HOPKINS: Thank you.

7 Are you ready?

8 MR. BATERA: Yes.

9 JUDGE HOPKINS: Go right ahead.

10 BY MR. BATERA: (Resuming)

11 Q Mr. Pyle, returning your attention briefly, I
12 hope, to the borax question again, can you tell me what
13 the percentage of the borax mined at U.S. Borax mined at
14 Boron that is shipped to the Burlington, Iowa, plant is?

15 A If it doesn't appear in numbers in my
16 statement, I cannot off the top of my head indicate what
17 that is.

18 Q Do you know whether borax from that U.S. Borax
19 mine is shipped from the mine directly to customers of
20 U.S. Borax?

21 A I believe that it is the process, the boric
22 acid, well, not boric acid, but rather the boric oxide,
23 the process would be shipped directly to customers, but
24 none of the ore, but I'm not even entirely sure of
25 that.

1 Q Did you make any analysis of the impact of the
2 merger on receivers of products from borax located on
3 rail carriers other than the Santa Fe or the Southern
4 Pacific?

5 A Well, from -- based predominantly on a U.S.
6 Borax statement, a verified statement, we considered
7 them some movements into the northwest, and considered
8 those movements as a factor, and henceforth there is a
9 benefit associated with them in our opinion.

10 Q What is the benefit?

11 A Well, the benefit is related primarily to
12 transit time in a competitive situation whereas that
13 traffic, as I understand it, has moved to motor carrier
14 generally, or the motor carriers have become more of an
15 issue there. This may present an opportunity to -- a
16 merged system may in fact become more competitive and
17 allow U.S. Borax to maintain a presence and get into
18 that market in a better position than they currently
19 do.

20 But generally when we are talking about borax
21 and we are talking about the impact on borax as a
22 commodity of the combined system, generally by far and
23 away the biggest movement is to the port area in Los
24 Angeles, and that is where the primary benefit is.

25 Q Would you take a look at page 52? You have a

1 table. This deals with lumber. You have a table in the
2 middle of the page. Do you see that?

3 A Yes.

4 Q Did the figures relating to rail share there
5 refer to share for all intercity traffic?

6 A That refers to shipments, all originating
7 lumber shipments in the three states indicated there and
8 the rail share of the originating shipments, presumably
9 intercity.

10 Q Did you study figures for long haul movements
11 as distinguished from all movements?

12 A Generally --

13 Q Did you study them?

14 A I have seen figures for long haul movements.

15 Q In connection with the study?

16 A In connection with this and other studies.

17 Q And how did those figures compare?

18 A Generally what we would see is a slight
19 increase to probably the 50 percent level of long haul
20 transcontinental traffic originating on the Pacific
21 coast, moving to areas in the midwest and official
22 territory moving via rail.

23 The motor carriers would approximately move
24 half of that traffic, I would guess.

25 Q What is the source of those statistics you are

1 referring to?

2 A Generally, those statistics can be found at the
3 Western Wood Products Association or other
4 associations.

5 Q One last series of questions. On Page 47,
6 referring to iron and steel, if I could direct your
7 attention there, please --

8 A Page 47?

9 Q Yes, equipment supply. Do you foresee
10 increases in equipment supply as a benefit of the merger
11 for iron and steel shippers? Is that correct?

12 A That is correct.

13 Q How many specialized steel cars does Southern
14 Pacific have now?

15 A Oh, I couldn't tell you exactly in terms of an
16 aggregate fleet of specialized cars. As you well know,
17 depending on what kind of steel you are moving, it
18 depends on the car. There are flats. There are gons.
19 But I do have a specific example that might help to
20 illustrate how this --

21 Q Not at this point. Thank you.

22 What about the Santa Fe? Do you have the
23 figures for specialized steel cars that Santa Fe has?

24 A I do in my work papers. I do not have them at
25 hand.

1 Q But they are in your work papers?

2 A I believe so.

3 Q Do you know where Southern Pacific uses its
4 specialized steel cars today and what portion of its
5 system?

6 A I couldn't tell you.

7 Q What about the Santa Fe?

8 A The Santa Fe uses specialized steel cars
9 certainly in originating pipe traffic or pipe in the
10 southeast, rather, the southwest, in the Houston area,
11 to move to staging areas. That is in fact where cre of
12 the benefits of course from the combined fleet will
13 occur as the SF has some excess pipe flats that can be
14 used in that service which will benefit Santa Fe
15 shippers. And then, of course, there is midwestern
16 movements from the major midwest steel producing areas
17 where they use some specialized flats.

18 Q Does Southern Pacific have specialized steel
19 cars sitting idle today?

20 A Not to my knowledge.

21 Q Do you have knowledge one way or the other?

22 A No.

23 Q What about Santa Fe?

24 A I couldn't tell you.

25 Q What is the basis for your statement that as

1 the steel industry recovers, shortage of specialty
2 equipment is likely to occur?

3 A Well, generally what happens is, you provide a
4 specialized equipment for a service. Over time that
5 fleet may or may not diminish. The steel industry has
6 been seriously depressed. There are isolated areas
7 where, as I pointed out just a moment ago, an example of
8 where at least one of the carriers, the Santa Fe in
9 particular here, does have a short supply, presumably in
10 probably the most depressed state of the steel industry
11 in many, many years.

12 Where there are those shortages, if it
13 recunds, you could conceivably be looking at a shortage
14 in equipment.

15 Q On Page 48, your last point there, what do you
16 mean by surges in demand for specialty equipment?

17 A Well, the nature of construction projects
18 where steel pipe is an issue, they generally happen
19 within a short time frame, and in fact it is a high
20 demand type service. We have got to get so much
21 product, so much pipe to an area within a short time
22 frame. Therefore we need all the possible equipment
23 that we can generate into that service available at that
24 point in time.

25 It is a peak-valley type service, and when we

1 talk about specialty equipment, the specialty type
2 equipment needed for moving pipe to staging areas and
3 major pipe construction projects, that is generally what
4 I am referring to here. And the improved ability with
5 the combined fleets to meet those surges in demand.

6 Q When have surges in demand been a problem for
7 the Southern Pacific?

8 A I couldn't tell you for sure.

9 Q And when have surges in demand been a problem
10 for Santa Fe?

11 A Well, timeframewise, I couldn't really tell
12 you for sure. I couldn't give you specific dates.

13 Q I find I missed a lumber question, so if you
14 will just bear with me, on Page 57, am I correct that
15 you foresee benefits of single line service to lumber
16 shippers who previously used what are now closed
17 routes? Is that correct?

18 A Absolutely.

19 Q Could these benefits be made in the absence of
20 the merger?

21 A In my opinion, no.

22 Q Could the benefits be obtained simply by
23 rescinding the closed routes and increasing the now
24 decreased switching?

25 A Generally, with regard to just access to the

1 customers, yes. If you rescinded closed routes and
2 rescinded closed switchin, ther in fact you could gain
3 access.

4 MR. EATERA: Thank you, Mr. Pyle. No further
5 questions.

6 JUDGE HOPKINS: Who will be next? Mr.
7 Greenberg?

8 MR. GREENBERG: Thank you, Your Honor.

9 BY MR. GREENBERG:

10 Q Good morning, Mr. Pyle. My name is Ed
11 Greenberg, and I represent the MKT here today.

12 Beginning where the last questioner stopped on
13 the question of route closures, I gather you believe
14 that it is helpful for shippers to have competitive rail
15 service?

16 A I think that it is helpful to have access to
17 suppliers if you are a receiver, and I think it helps to
18 have access to receivers if you are a supplier. Not
19 necessarily competitive rail service, but rail service.

20 Q You don't think competitive service is helpful
21 to shippers?

22 A I think competitive options are helpful to
23 shippers, whether they are rail options or motor carrier
24 options or barge options. I like to see options.

25 Q And if there aren't any competitive options

1 available, that is not in the public interest?

2 A Yes, but I would be hard pressed to come up
3 with an example of that kind of situation.

4 Q Well, on Page 57 of your testimony, I would
5 like you to turn to that, please.

6 A I am right there.

7 Q When you discuss route closures, increased
8 switching charges that have placed shippers and
9 receivers dependent on interline service at a
10 competitive disadvantage, what route closings did you
11 have in mind when you wrote that statement?

12 A Well, generally a given situation and two
13 areas specifically. The given situation is that
14 Southern Pacific originates the lumber traffic that
15 moves predominantly over the joint system. In other
16 words -- or over the two systems, I should say,
17 independent.

18 Santa Fe in fact is primarily an interline
19 receiver of lumber traffic. It has very few
20 originations. Ninety percent of the combined system
21 total would end up being SF origination, and what has
22 happened is, for whatever reasons, that the management
23 of the independent systems have determined, and I don't
24 know what their rationale is, they have closed certain
25 routes via Santa Fe interline, and in fact closed

1 certain switching. The SP has closed certain routes.
2 The Santa Fe has closed certain switching access for SP
3 shippers.

4 Now, it happened specifically in the LA area,
5 and in fact lumber shippers do enjoy a much better
6 alternative shipping via SP direct if they have SP
7 destinations versus shippers shipping to Santa Fe
8 destinations.

9 The same situation, there have been closures
10 in the Phoenix area. Now, where that is detrimental is
11 in fact, if I am a shipper, I can't ship to some
12 customers that perhaps I shipped to previously or I want
13 to ship to in terms of expanding my customer base,
14 because I can't get in there.

15 Q So is it your testimony then that shippers who
16 are dependent on interline service on SP originated
17 traffic were placed at a competitive disadvantage
18 because of the route closings?

19 A In some instances, that is correct.

20 Q Would that have been true that the shippers
21 would have been placed at a competitive disadvantage if
22 they were located on railroads other than -- excuse me,
23 if the destinations were located on railroads other than
24 the Santa Fe?

25 A Well, if the decision was to give advantage to

1 an originating shipper who moves shipments to
2 terminating, or that terminate on the system that
3 originates the shipment, if you are not on the SP, it
4 doesn't really make much difference who else you are on.
5 The same thing would apply.

6 Q Did you do an analysis of any of the -- I
7 hesitate to use the term "anticompetitive effects," but
8 let's say the demarketing effects, so that I can get an
9 answer from you? Did you do a study of any of the
10 demarketing effects that any of these route closings had
11 with respect to shippers who were dependent on interline
12 service on railroads other than the Santa Fe?

13 A I wonder if I could ask you to maybe explain
14 demarketing to me.

15 Q Well, I used that term because I didn't think
16 I'd get an answer if I used "competitive disadvantage,"
17 despite the fact that you used it in your testimony, but
18 I use your term, "competitive disadvantage."

19 A First of all, understand that my competitive
20 disadvantage, where I refer to it, relates to the
21 marketing opportunities for the shippers within this
22 commodity area. It is not a reference to any kind of a
23 transportation competitive situation which, as you may
24 know, we did not address.

25 But we did address where opportunities,

1 benefits related to marketing opportunities for the
2 shippers within these commodity groups.

3 Q Okay. I thought that we had an agreement that
4 shippers who were dependent on interline service were at
5 a competitive disadvantage as a result of the route
6 closings by the SP.

7 A To those customers that in fact where those
8 routes were closed.

9 Q Is it in the public interest for shippers to
10 be deprived of competitive opportunities to expand into
11 new markets?

12 A I would not apply a term such as public
13 interest.

14 Q What term would you apply?

15 A It is a marketing situation. First of all, I
16 am not denying access to the customers. If you look at
17 any number of statistics --

18 Q Excuse me. In your answer, when you say we,
19 could you tell me who you referred to?

20 A We is me. I will tell you why I said we. My
21 normal presentations are to groups where I represent
22 A.T. Kearney, not Harlen Pyle. We refer to that as we.
23 I am I. I will refer to I. I wouldn't refer to that as
24 an issue regarding the public interest. That is a
25 marketing situation, recognizing that you are not

1 closing those customers to products shipped, terminated
2 by somebody else.

3 What you are doing is, you are closing them to
4 suppliers originating on SP who may have received some
5 traffic via rail. What we find in some of the
6 statistics is in fact that there are -- the predominance
7 of traffic, especially Southern California, destined
8 traffic from Oregon is -- a lot of that is moving via
9 motor carrier, so they are not shut out in terms of
10 losing a supplier, or the shipper isn't losing a
11 receiver.

12 Q Well, if they are not shut out, then I have
13 difficulty understanding why you used the term
14 "competitive disadvantage in the marketplace" when you
15 prepared your testimony.

16 A Okay. What I am referring to, what I am
17 addressing is the issue of when the situation occurs in
18 what may be a situation where obviously there may be
19 some competitive situation or there may be some decision
20 made by the people who make the decisions to close
21 routes regarding the rail transportation competitive
22 situation, that in fact what I am saying is, if the
23 combined system in fact allows those shippers that have
24 been closed out or those receivers that have been closed
25 out for whatever reason, that if they can get a rail

1 alternative that can again, in fact be a sound
2 competitive alternative and allow them to get into the
3 marketplace again from a rail standpoint and be
4 competitive with a motor carrier option, then in fact
5 that is a competitive advantage.

6 Q Then are you saying that one of the benefits
7 of the merger is that as a result of the merger, that
8 shippers will no longer be at the same competitive
9 disadvantage they are today because of the prior
10 noncompetitive action taken by the SP?

11 A No, what I am saying is that they will be in a
12 better position to compete in that marketplace because
13 they will now have a renewed, strong rail alternative.
14 That in fact will be in and be competitive presumably
15 with the motor carrier alternative which they have to
16 rely on currently under that situation, under that
17 scenario.

18 Q I don't think you answered my last question.
19 Let me try it from a different direction. Are you
20 saying that the merger will have the positive benefit of
21 restoring rail alternatives to shippers who lost them
22 because of route cancellations taken by the SP?

23 A That is generally, yes, what I am saying.

24 Q Thank you. I gather that when you were given
25 the assignment to prepare your study originally there

1 was an intention that shippers be interviewed. Is that
2 correct?

3 A That is correct.

4 Q And those instructions were given to you at a
5 meeting in Chicago in January of this year?

6 A I would imagine around that time somewhere.

7 Q And you ended up interviewing just a single
8 shipper. Is that correct?

9 A That is correct.

10 Q That is Kimberly Clark. You indicate that
11 Kimberly Clark's commodities are inbound pulp, waste
12 paper, and sanitary paper. The inbound pulp that moves
13 to the two facilities that you discussed, Fullerton,
14 California, and Memphis, Tennessee. How did these
15 commodities move? By what mode?

16 A Well, I don't believe I stated that -- I said
17 they had facilities that produce paper at those two
18 points, and in fact one of the major commodities that
19 they move is inbound pulp. Now, I am not sure of this,
20 but I don't think that the predominance of the pulp at
21 Fullerton comes from those two facilities. I believe,
22 and I can't be sure of this, that they buy that on the
23 open market generally to try to get it closer.

24 In fact, to be honest with you, they move via
25 rail, but whether it moves to Fullerton and moves to

Memphis, and from where, and how, I couldn't tell you.

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1 Q And the waste paper moves how?

2 A That's going to move predominantly motor
3 carrier.

4 Q And sanitary paper moves --

5 A Predominantly motor carrier.

6 Q So the one shipper you interviewed really
7 doesn't handle any of the bulk commodities that you
8 studied?

9 A They handle paper products, which I studied on
10 a general basis.

11 Q And with respect to the paper products that
12 they handle, the only aspect of their service which
13 requires, today requires, rail is their in-bound moves
14 of pulp?

15 A Generally that's true.

16 Q How did you happen to pick Kimberly-Clark?

17 A Well, what happened -- and you referred to the
18 meeting in January -- our original approach to this
19 project, as has been discussed, was to rely on a fairly
20 large sample of interviews, and a case for my
21 commodities in general and a decision I would have liked
22 to have made, which subsequently was made, is that the
23 interview process had really little bearing on it in
24 terms of the ability to analyze the benefits.

25 A reason for that is that if you have seen the

1 interview guide and the work paper, the original one
2 that was developed, highly detailed, I have done a lot
3 of interviewing since I have been with A. T. Kearney,
4 and what I found is that generally you're not going to
5 get the kind of detail that we were supposedly going to
6 rely on to generate the information that you see here.

7 What happened was that I was never totally in
8 support of the interview process anyway. I would have
9 preferred not to do any interviews at all. Under the
10 instructions that you saw in January I immediately
11 contacted Kimberly Clark, who we thought would be
12 willing to discuss things with us. They were.

13 My intention was to discuss some others. It
14 was not too long after that that they made the decision
15 to change and not rely on the interview process as the
16 general methodology, a decision which I applauded and
17 was very happy to, but already had the Kimberly Clark
18 interview set up, so I just went ahead and did it.

19 Q You testified about the problem, this morning
20 about the problem for the Santa Fe to get into Houston,
21 a lot of congestion in that area. Is there any way for
22 the Santa Fe to avoid the congestion caused by turning
23 the traffic over to the Houston Belt without merging?

24 A Well, now there is. As I understand it, there
25 will be an interchange. The issue was a congested

1 interchange, and that interchange would be avoided and
2 in fact the Santa Fe will now be able to access the SP,
3 although it had access prior to that. In certain
4 movements it will -- we would have to rely on the
5 Houston Belt terminal. It will not have to rely on it
6 any longer.

7 Q When was that agreement made?

8 A Agreement?

9 Q You said there is new agreement. Is that
10 subject to the merger only?

11 A Yes. This is under the conditions of the
12 merger, as I understand it.

13 Q Was it possible without the merger for the
14 Santa Fe to enter into an operating agreement with the
15 SP in order to get access directly to the PTRR?

16 A I couldn't tell you. We didn't study the
17 systems as they exist now, and in terms of Houston, you
18 know, I just don't know.

19 Q Is it possible in general for railroads to
20 enter into such operating agreements?

21 A I suspect that there are such agreements in
22 effect. I do not know of any.

23 Q You do not know of any. So then you do not
24 know whether the SF currently has any such agreements
25 with the Santa Fe?

1 A I do not.

2 Q Would you turn to page 31 of your testimony?
3 At the bottom of page 31, the top of page 32, you are
4 discussing what you call the fragile nature of the
5 economics for aggregate shippers, and you indicate that
6 single line service for aggregates is extremely
7 important due to this factor. The interchange is not
8 economical, I gather.

9 A Generally that certainly has an impact.

10 Q Would run-through trains provide an
11 alternative to single line service?

12 A We are embarking on operating opinions which
13 are not the authority to ask on that. I would be
14 hesitant to -- what you would get from me is an opinion
15 and I am not an operating expert. There would be
16 somebody better to ask.

17 Q Mr. Pyle, you gave us an opinion that the
18 lumber route used could be reduced by 24 hours because
19 of the merger because of the reduction in interchanges,
20 and with respect to run-through trains we have the same
21 kind of prelocking and avoidance of interchanges on
22 those kinds of situations as well.

23 Can you give me an opinion as to whether or
24 not there would be any time saving?

25 A If I implied that the lumber example that you

1 were referring to was an opinion, it was my mistake. I
2 think what I intended for that to mean is that I relied
3 on specifics on the operating statement to address that
4 specific issues. Where I don't have those specifics
5 here, then it would not be a good idea to have an
6 opinion on that.

7 Q Okay. As a general rule, then, without tying
8 you into any specific analysis, is it your opinion that
9 run-through trains can offer some of the same benefits
10 of single line service?

11 A To answer your question, they could offer some
12 of the benefits.

13 Q Is there a theoretical distance beyond which
14 aggregates can't move by rail regardless of whether it's
15 in single line service?

16 A I'm sorry. Would you repeat that?

17 Q Yes. Is there a theoretical distance? Is
18 there a break point at which point rail transportation
19 is not economical?

20 A In terms of distance?

21 Q Yes.

22 A No, there isn't one that I know of.

23 Q So that it is possible for shippers to be in
24 the aggregate business and rely on long distance move
25 of --

1 A No, and that's not related to the rail
2 transportation or the motor carrier transportation
3 exclusively. What happens is that based on the value of
4 the product it's a very small regional issue. In other
5 words, you're not going to, regardless of what do in
6 terms of rates, you're not going to be able to extend a
7 given aggregate supplier's marketing area very far
8 distance-wise, whether it is rail or motor carrier.

9 He's going to serve a given area. The Houston
10 aggregate suppliers are going to serve the Houston
11 area. They're not going to serve the Dallas area. And
12 the transportation relationship is how can you create a
13 competitive transportation situation in the Houston
14 area, which is a given radius, and I guess to answer
15 your question I have no distance generality that would
16 answer in terms of where rail is the obvious alternative
17 or where truck is.

18 Q Have you ever heard the term frac sand --
19 that's f-r-a-c-sand?

20 A No.

21 Q How about industrial sand?

22 A I've heard of the term industrial sand.

23 Q What does that mean to you?

24 A I presume it means some kind of -- it's a sand
25 product that to me in terms of the transportation issue

1 implies some kind of a bulk granular commodity.

2 Q Are you familiar with the kind of sand which
3 is used in the oil well drilling business to fracture
4 oil wells?

5 A No.

6 Q So I gather that since you're not familiar
7 with it your study did not include any analysis of any
8 benefits to shippers who might have need for that
9 particular commodity?

10 A Specifically do you mean with frac sand? The
11 answer is no. I looked at aggregates generally as they
12 relate to transportation.

13 Q Do you know whether there is an aggregate
14 market at Corpus Christi?

15 A I do not.

16 Q I believe your testimony indicates that for
17 aggregate shippers the transportation portion of the
18 total delivered price is fairly high.

19 A That is correct -- can be relatively high.

20 Q So is competitive rail service or competitive
21 transportation service helpful to people who rely on
22 obtaining contracts for delivering aggregate?

23 A Aggregates generally are considered on a
24 supply, on a delivered basis, and if there is a
25 competitive transportation situation, all alternatives

1 considered, yes, that is beneficial to the buyer.

2 Q By and large is competitive service for any
3 commodity helpful to shippers?

4 A I'd say that generally that's a relatively
5 true statement in terms of all loads and alternatives
6 considered, yes.

7 Q Why is that?

8 Well, I don't know that there's a lot of
9 science to it. It's a situation where you generally are
10 in a position of strength if you have more than one
11 alternative as a buyer or a supplier in any kind of
12 business, not just transportation.

13 Q What kind of strength?

14 A Well, you want some -- you want some
15 bargaining strength.

16 Q For what purpose? What does it give you?

17 A It gives you a strong position in dealing with
18 the business environment, which is essentially an
19 environment of give-and-take negotiation and buy and
20 sell.

21 Q In the transportation business where we're
22 talking about competitive transportation, would it be
23 helpful in providing better service to a shipper?

24 A That certainly might be a part of it.

25 Q Would it be helpful in obtaining better

1 rates?

2 A Rate issue generally is one that, as you well
3 know, we didn't address, and as an opinion a shipper
4 from a strong bargaining position may have some
5 influence, may not in all cases, over some rates.

6 Q But it's helpful from a rate standpoint as a
7 general rule?

8 A It's a part of the bargaining position for a
9 general rule, and it can have an impact, yes.

10 Q It can have an impact, but is that a helpful
11 impact?

12 A Normally it is a helpful impact.

13 Q Thank you. Can it have a helpful impact in
14 the lumber industry?

15 A Yes.

16 Q And if it can be demonstrated that a shipper
17 does have a need for rail transportation, is it helpful
18 for that shipper to also have competitive rail
19 transportation?

20 A No. You see, everything was fine until then.

21 Q I had that feeling.

22 A You see, the issue from a shipper's
23 perspective, the issue is competitive transportation
24 options. And if my options exist from rail versus motor
25 carrier, which generally is the competitive situation,

1 that's the important comparison. If I have a third
2 option, which may be another rail alternative or a
3 fourth, fifth, through option 500, which is all the
4 motor carriers that are competing for the motor carrier
5 portion, that isn't important to me.

6 What I want are those top two. Those are the
7 two that I play off. Those are the ones I'm interested
8 in, and what happens generally is from the standpoint of
9 is there a competitive alternative within rail
10 transportation specifically, by and large we're not in a
11 situation where a large number of the shippers in these
12 groups have originating plants and originating points on
13 more than one carrier currently.

14 So the answer is no.

15 Q Well, the fact that they don't have plants
16 located on tracks that are served by more than one
17 carrier doesn't change the fact that if they could get
18 competitive service that they would be in a better
19 position.

20 A Technically you are correct, but the fact of
21 the matter is the driving force is the intermodal
22 transportation marketplace, not the intramodal
23 transportation marketplace, and that's the point that's
24 most important across almost each and every one of these
25 commodities in this group.

1 Q You reached that conclusion without having
2 discussed the topic with any shippers, though?

3 A In fact, I reached this conclusion based upon
4 a certain amount of statistical analysis which will tell
5 you what's happening in the transportation marketplace
6 and what obviously reflects some kind of influence from
7 a modal standpoint.

8 I also reached that conclusion based upon the
9 fact that most of our work is done on the shipper's side
10 of the transportation business, and we know what
11 motivates shipper decisionmaking.

12 Q You know what motivates shipper
13 decisionmaking. Does competitive rail service motivate
14 shipper decisionmaking?

15 A It does. It certainly does. But generally
16 what you have is a situation where you don't have
17 competitive intramodal rail service, and in fact what we
18 do have, what does exist in the transportation
19 marketplace, is a situation where you have rail service
20 competing against motor carrier service. And if you
21 look at the statistics that go along with that you will
22 find out that there is a big shift towards the motor
23 carrier side of it.

24 Q And is one of the reasons why the shift toward
25 the motor carrier side of it is the situation you

1 discussed on page 57, which is the situation where the
2 SP closed lumber routes to Phoenix and those places so
3 that shippers who wanted to reach the markets previously
4 served by the Santa Fe now had a transportation option?

5 A I believe that the freedom and ability to
6 close routes originated basically with the Staggers Act
7 in 1980. If you will look at the statistics for the
8 shift of lumber, paper, forest products, traffic in
9 general, the shift started ten or 15 years ago to motor
10 carriers.

11 The impact is not in any way, shape or form
12 correlated to what's happened since 1980. This happened
13 before 1970.

14 Q Well, how did the shipper who wanted to serve
15 a facility on the Santa Fe, how was he able to reach
16 that particular facility after the route was cancelled
17 by the SP?

18 A Generally he would have had to rely on motor
19 carriers, which he was probably already relying on to a
20 certain extent.

21 MR. GREENBERG: No further questions.

22 JUDGE HOPKINS: Thank you. Mr. Ratner, you
23 are surprised, aren't you?

24 CROSS EXAMINATION

25 BY MR. RATNER:

1 Q I am Jame Ratner. I'm from the United States
2 Department of Justice.

3 If you would turn to page 3 of your verified
4 statement, and actually your's is different. It spills
5 over to page 4. Do you read where you say, "I have
6 assumed that shippers will recognize this example"?

7 A Yes.

8 Q Did you specifically analyze or evaluate the
9 difficulty shippers might face in achieving the prompt
10 and practical implementation of programs needed to
11 realize the benefits you discuss in your testimony?

12 A I in fact in regards to this statement, I did
13 not. But I have.

14 Q In regard to this statement you did not?

15 A I did not.

16 Q Thank you. Is it fair to say that in general
17 bulk is a low value commodity?

18 A In general that's not a fair statement.
19 You've got -- if you refer to bulk in terms of how we
20 use it in the context of my commodity, we have some
21 fairly significantly high value commodities in here.
22 Iron and steel is fairly high value. Porax is even
23 fairly high value. Lumber, of course, is fairly high
24 value.

25 So, no, that statement isn't fair in terms of

1 some of the commodities represented in this statement.

2 If you are referring to aggregates, sure that's true.

3 Q So within your group of bulk here there's a
4 degree of variety as to the attributes of the particular
5 commodities?

6 A There's a dichotomy there of high value versus
7 low value, yes.

8 Q Is it true for all bulk commodities that since
9 transportation is a high proportion of the delivered
10 price shippers of bulk need as low a transportation cost
11 as possible?

12 A Everybody needs as low a transportation cost
13 as possible, that's true.

14 Q On page 29 of your testimony, where you are
15 referring to the middle of the page there, the greatest
16 percentages moved to destination by truck for one or
17 more of the following reasons, and you list short hauls
18 there.

19 Does rail have a cost advantage in the
20 movement in long hauls?

21 A If you are referring to aggregates, aggregates
22 don't move long haul. It is all short haul. And if you
23 are referring to in general, the answer is no.

24 Q Are there zero long haul movements of
25 aggregates in the United States today?

1 A In terms of construction aggregates, which is
2 what I am addressing, yes. You won't move it more than
3 probably a couple of hundred miles.

4 Q Your testimony is there is none?

5 A There are virtually none that I know of is my
6 testimony.

7 Q On page 73 and 74, down at the bottom you
8 refer to a contract opportunity.

9 A Yes.

10 Q You may have been asked this before, I'm not
11 sure, but I'll just go ahead and try to briefly ask it
12 again. Do you know whether the shippers that you
13 referred to are at all interested in that type of
14 contract?

15 A The answer is yes, that they are.

16 Q How do you know that?

17 A Well, as I understand it, there are some
18 contracts similar in nature to this in existence for
19 potash right now, and they relate primarily to the idea
20 of high volume movements into distribution centers to
21 try to gain access to markets previously lost or
22 maintain their possession in markets.

23 You have to remember in potash, you know, you
24 have an international market situation and you are
25 competing against -- the general competitors here are

1 competing against suppliers from Canada, and it's a
2 geographical market orientation, so I believe there are
3 some of this nature in effect right now.

4 Q I understand that, and maybe you don't
5 understand my question. Did you talk to any of the
6 shippers involved who do not have these contracts now
7 but could get them?

8 A I did not talk to any shippers in context with
9 potash regarding this statement.

10 Q So you do not know in fact whether these
11 shippers desire these contracts at all?

12 A I do not know in fact from the shipper, from
13 given shippers that that is true.

14 Q Do you know in fact whether these shippers are
15 currently unable to obtain adequate service in
16 contracts?

17 A I believe these shippers are able to obtain
18 adequate service and contracts.

19 Q Currently?

20 A Currently.

21 Q On page 79, where you refer to moves of liquid
22 sulfur originating -- page 79 actually -- and you refer
23 that sulfur was produced at 21 sites in the States of
24 Texas, New Mexico, and Arizona.

25 A Yes.

1 Q Do you know how many of those 21 sites are
2 served only by Southern Pacific or Santa Fe?

3 A Are we are on page 79?

4 Q I think so. I am, anyway.

5 MR. MCATES: First paragraph under the
6 heading.

7 BY MR. RATNER: (Resuming)

8 Q Right under the heading C, the role of Santa
9 Fe.

10 A I see. Now the question again?

11 Q Do you know how many of those 21 sites are
12 served by rail only by Southern Pacific or Santa Fe?

13 A I could not tell you exactly where, who serves
14 who of those 21.

15 Q Page 36 you are talking about copper smelting
16 here, is that right, at the top?

17 A Yes.

18 Q If I did my addition right, you are referring
19 to 77 percent of the United States smelting capacity in
20 Arizona, New Mexico, and Utah. Is that right?

21 A That looks like you did your addition right,
22 yes.

23 Q Where is the remainder?

24 A Spread out. I believe in my work papers it
25 identifies where the remainder is. I do not have that

1 at the top of my head.

2 Q Of that 77 percent in Arizona, New Mexico and
3 Utah, do you know what percentage of those smelters are
4 served by rail only by Southern Pacific or Santa Fe?

5 A A significant portion of that is in Texas.
6 They have some smelting in Texas that adds
7 significantly.

8 Q In addition to the 55 and 22?

9 A In addition to that there is some in Texas,
10 and then other places which I don't know. Now could I
11 have your last question again?

12 Q Well, let's add the additional that you know
13 is in Texas, and all of that, do you have any idea what
14 percentage of that is served by rail only by Southern
15 Pacific or Santa Fe?

16 A Generally if it's in New Mexico or Arizona and
17 it is rail-served, it is going to be served by one or
18 the other. I couldn't tell you exactly who is
19 rail-served and who isn't. I also know there is a major
20 smelter at El Paso that is in fact rail-served by Santa
21 Fe-Southern Pacific and MoPac.

22 Q For the purposes of your testimony today did
23 you examine, investigate, or consider in any way the
24 substitutability of rail for truck or truck for rail in
25 terms of bulk?

1 A I think that that's kind of an implicit part
2 of this whole thing when you're dealing with bulk
3 commodities, and that generally you can find
4 statistically that there are -- that in each one of
5 these commodity groups there is a portion moving via
6 motor carrier and a portion moving via rail.

7 Q I understand you can find that and that there
8 are ways to do it. I am asking you if you undertook
9 those ways to do it for the purpose of this study.

10 A I did not approach this study with the purpose
11 of evaluating competitive -- the competitive situation
12 vis-a-vis your question.

13 Q I didn't ask you as to the competitive
14 circumstances. I asked you as to the substitutability
15 of rail for truck and truck for rail.

16 A I did not.

17 Q Fine. With respect to the logistics cost and
18 service levels that you identify on page 4, is it fair
19 to say that you have not evaluated whether shippers will
20 experience no harm, a little harm, or a lot of harm from
21 the possible anti-competitive implications of this
22 merger?

23 A That is a fair statement.

24 Q Is it fair to say that your conclusion on page
25 18 that the merger will result in significant benefit

1 to shippers in bulk areas -- do you see that?

2 A Under conclusion yes, I sure do.

3 Q Is it fair to say that that conclusion does
4 not reflect the possibility that the benefits that you
5 refer to could be distorted, eliminated or
6 counter-balanced by possible anti-competitive harm as to
7 the merger?

8 A I don't think that's a fair statement, no.
9 Implicit in this whole thing is a statement that says if
10 we are dealing with a commodity group, especially a bulk
11 commodity group where transportation is such an
12 important part of it, if the implication is that there
13 are anti-competitive portions of this thing, then in
14 fact this wouldn't be included as a statement.

15 The fact of the matter is that we are not
16 dealing in a situation where it would be
17 anti-competitive, and from the standpoint that I've
18 tried to point out, from the marketplace, and these
19 people's ability, the shippers in these groups, to
20 maintain a presence in their markets, competitive
21 transportation is important.

22 Q You didn't evaluate whether or not it would be
23 anti-competitive; is that correct?

24 A I did not evaluate anything that was
25 anti-competitive.

1 Q So to the extent that you have no information
2 because you didn't evaluate it, those things that you
3 did not evaluate are not reflected in your statement
4 about significant benefits to shippers on the subject
5 bulk industries; is that correct?

6 A I apologize. Could you repeat that? There
7 are too many parts.

8 Q To the extent that you didn't evaluate about
9 anti-competitive implications or, if Mr. Moates would
10 prefer, possible anti-competitive implications, those
11 implications which you did not evaluate are not
12 reflected in your statement that there are --

13 MR. WILSON: Counsel, we are willing to
14 stipulate that those things which Mr. Pyle did not
15 evaluate are not reflected in his statement.

16 MR. RATNER: They are not reflected in an
17 overall consideration that -- about the benefits of the
18 merger? You will stipulate to that, that he is not
19 making a statement that there are not benefits from this
20 merger?

21 MR. WILSON: No, I won't stipulate to that.
22 You will have to ask him that.

23 MR. RATNER: Well, that's what I'm trying to
24 ask him, counsel.

25 THE WITNESS: I won't stipulate to that

1 either. There are net benefits from the merger, and
2 that's what I tried to point out.

3 Now in fact I did not evaluate the
4 anti-competitive nature of the merger, if that answers
5 your question, but it is not a situation where I did not
6 evaluate the net benefits of this thing because that is
7 in fact what we're talking about here.

8 BY MR. RATNER: (Resuming)

9 Q If you looked at some benefits and didn't look
10 at any possibility of harm in a certain area, how can
11 you make a net conclusion?

12 A Net conclusion is misleading. What we looked
13 at is where we saw benefits. These are not benefits
14 that are interchangeable or that are minused from other
15 benefits or minused from harm to eliminate. These are
16 benefits. You don't eliminate them by a net effect.

17 Q You do not believe it is possible that the
18 benefits you have described could be distorted or
19 interfered with by possible anti-competitive
20 implications of this merger?

21 A I have no opinion on that.

22 Q Did you evaluate in any way whether the
23 benefits of the merger that you discuss could be
24 achievable by a method other than a merger through the
25 Southern Pacific and the Santa Fe?

1 A No. The premise --

2 Q That's fine. Thank you very much.

3 MR. RATNER: I have no other questions, Your
4 Honor.

5 JUDGE HOPKINS: Mr. MacKenzie.

6 CROSS EXAMINATION

7 BY MR. VINCENT MAC KENZIE:

8 Q The last few days I felt like Cinderella, the
9 last five minutes at the end. I have a few questions,
10 Mr. Pyle. I am Mr. MacKenzie from the State of
11 California.

12 You responded to one of the previous counsels
13 and gave your opinion of the transportation shares
14 enjoyed by railroads and motor carriers for certain bulk
15 and bulk products in the United States. Do you recall
16 that?

17 A Yes, sir.

18 Q Do you have any specific knowledge or have you
19 studied the transportation shares enjoyed by rail versus
20 motor carriers within the State of California,
21 interstate and intrastate?

22 A I have seen within the forest products,
23 specifically lumber, I have seen statistics regarding
24 shares of intra-California shipments of lumber.

25 Q Inter as well?

1 A Inter as well from the Pacific coast.

2 Q Yes. Do you know, for instance -- well, my
3 notes indicate you indicated that it was primarily a
4 motor carrier traffic involving lumber.

5 A That is true.

6 Q Okay. Let me ask you about specific
7 products. First of all, were you talking about
8 primarily raw lumber or either low-finished or
9 no-finished lumber?

10 A Dimension lumber and plywood generally --
11 unfinished, I guess.

12 Q Yes. In other words, there are finished
13 lumber products that also are hauled in the State of
14 California, right?

15 A Absolutely.

16 Q And do you know whether or not, for instance,
17 some of the lower quality or lower graded woods, such as
18 pine, have a greater tendency to go by rail versus,
19 let's say, the redwood type or the quality type of
20 products?

21 A I do not have statistics that would support an
22 opinion either way.

23 Q You don't know?

24 A I do not know.

25 Q There are -- are there significant shipments

1 of lumber, interstate and intrastate, in California that
2 do move by rail?

3 A There appear to be, yes.

4 Q Now as to some of these other products, let's
5 take paper, for instance, when you said mostly motor
6 carrier were you again talking primarily of raw paper
7 products?

8 A Generally yes. What you have is most of the
9 paper products in terms of traffic are in an area,
10 predominately linerboard or pulp board, and then there
11 are some other coated, non-coated printing papers that
12 are the predominance of the traffic.

13 Q Are there some segment of that paper traffic
14 that does move to a significant degree by rail and, if
15 so, what are they?

16 A Generally what you have -- the group of paper
17 products that move as products for further processing,
18 such as magazine grade roll stock, predominantly
19 linerboard to be made into cardboard boxes, that group,
20 un-coated -- coated magazine papers.

21 Q And shippers find it to their advantage to use
22 rail to a significant degree for those, for the shipment
23 of those goods?

24 A Shippers use rail.

25 Q As to aggregates -- and I assume aggregates is

1 a term of art -- you indicated that 98 percent move by
2 motor carrier.

3 A Some percentage up around that area.

4 Q Are we talking about sand and gravel
5 primarily?

6 A We're talking about construction aggregates --
7 sand, gravel, those two specifically, some crushed
8 limestone.

9 Q How does that jibe with your statement on page
10 30, the last paragraph, where you state, "large volumes
11 of limestone and construction materials are now carried
12 by both railroads, primarily in Texas and California"?

13 A Okay. You have to keep that in relative
14 relationship. Generally aggregates -- I believe the
15 numbers are in here -- about 2 billion tons a year of
16 them, are produced. Ninety-eight percent of that moves
17 via truck. You still have substantial volumes that can
18 move via rail, and that's what that refers to.

19 Q So limestone and construction materials are
20 within the term "aggregates"?

21 A Generally yes.

22 Q As to iron and steel products, is there any
23 type of iron or steel product, especially of the ore
24 nature, that uses to a significant degree the
25 transportation by rail that affects California?

1 A Not that I know of. The fact is, as I
2 understand it, the steel industry in California is
3 taking kind of a beating and if there were any
4 substantial movements, some of them no longer exist.

5 Q That's my next question. The plant at Fontana
6 that I assume receives ore of some type from some
7 source, do you know whether or not their ore is shipped
8 by rail?

9 A It is my understanding that the plant at
10 Fontana is closed.

11 MR. VINCENT MAC KENZIE: Thank you.

12 JUDGE HOPKINS: Mr. Wilson?

13 MR. WILSON: Yes, I have some redirect.

14 REDIRECT EXAMINATION

15 BY MR. WILSON:

16 Q Counsel for Rio Grande asked you a question
17 and then asked me to ask you on redirect. Why did you
18 make no distinction between long haul and short haul
19 movement, in your testimony about the increasing volume
20 of bulk freight that is handled by truck?

21 A Any kind of reference to distance would have
22 been misleading. What we found since 1980 under
23 deregulation, especially motor carrier deregulation, is
24 the irregular route truckload motor carriers, which are
25 the motor carriers that would compete for the

1 commodities that are represented in my statement, are
2 moving longer and longer distances.

3 Specifically, I think that you would find if
4 you evaluated major truckload carriers, you would find
5 that the most successful ones in fact have average hauls
6 of somewhere between up to 1,000 miles, some closer to
7 1,200 miles. Prior to deregulation this was almost
8 unheard of and in fact what it says in effect is that
9 the ability of the motor carriers to compete in
10 commodities like these have expanded dramatically.

11 And that's the point that I think is most
12 important.

13 Q Okay. In connection with the KCS cross
14 examination I have two redirect questions. The first,
15 what impact does competition from commodities produced
16 in other countries have on the merged system's price and
17 service offerings to shippers of the bulk commodities
18 that you studied?

19 A It has a significant impact. A couple of
20 brief examples would probably illustrate. First of all,
21 we talk about the competitive nature of lumber moving
22 especially from the Pacific coast to the midwest or the
23 east. What we have to remember is it competes, number
24 one, to maintain its presence in its geographical market
25 area. It competes with southern lumber.

1 Number two, it competes with Canadian lumber.
2 Thirty percent of the market for lumber in the United
3 States is supplied with Canadian lumber now. There is
4 one example of the importance of recognizing the
5 international effect on U.S. domestic markets.

6 Number two is potash. The Canadians in
7 Saskatchewan are now the major supplier of potash to the
8 corn belt -- that Iowa, Illinois, Indiana region -- and
9 it has forced back the Carlsbad suppliers to a certain
10 extent. So they are in a position where they have to
11 try to get their product into that market more
12 competitively if they are going to maintain a hold
13 there. Otherwise, regionally they are going to
14 decline.

15 There are other examples of that same kind of
16 thing along these commodity groups.

17 Q Okay. The second question I have, KCS was
18 asking a question on page 47 of your verified statement
19 about the equipment supply benefits of this merger for
20 iron and steel shippers. Again, you said that you had
21 an example of that benefit, and again it was suggested
22 that I ask you on redirect about that example, so why
23 don't you state that example?

24 A I'm not sure that I didn't get that in.

25 JUDGE HOPKINS: Do you want to repeat it

1 again?

2 THE WITNESS: I'll be happy to. The specific
3 example relates to equipped flatcars for pipe loading.
4 Apparently the Santa Fe needs flatcars for pipe loading
5 and the SP has somewhere an estimated number of about
6 150, and this comes from a verified statement provided
7 on behalf of the Santa Fe and SP.

8 And the Santa Fe shippers would benefit by
9 making these cars available and that is a specific
10 example of an equipment benefit in that area.

11 BY MR. WILSON: (Resuming)

12 Q Okay. In the Department of Justice cross
13 examination you had an example -- you had a question
14 about your statement at the bottom of page 3 going on to
15 page 4. You stated that in connection with this
16 particular verified statement you did not make a
17 specific study but that you had made studies in the past
18 of the extent to which shippers will take prompt actions
19 to take advantage of rail service improvements from
20 mergers.

21 Could you tell us about that?

22 A An extremely important consideration for
23 shippers in the post-deregulated environment is how can
24 they reduce transportation costs and still be effective
25 as marketers in providing service in their given

1 businesses. We participate very often in evaluations of
2 ways in which we can identify to reduce transportation
3 costs or those costs associated with transportation.

4 A large one, especially for shippers in this
5 commodity group, is the cost of providing
6 privately-owned equipment. It's key because you're
7 talking about basically for any kind of tank equipment
8 about \$60,000. For a covered hopper car my guess is
9 right around 50, and it's a high cost item. And any
10 time that they can find a way through improved equipment
11 utilization predominantly to decrease the number of cars
12 they have to maintain in their fleet, they will do
13 that.

14 And let me give you a quick example of
15 generally how that would work. Can they put it into
16 effect immediately? Anybody with a leased car fleet
17 normally will lease on an interval situation. Every
18 year or two some number of those cars come up for
19 re-lease. Generally, if they can find a way to reduce
20 those needs they don't in fact lease those cars, saving
21 anywhere sometimes from \$400 to \$600 a month on a
22 full-service lease for that kind of equipment.

23 You eliminate 100 cars, if you are that big a
24 shipper, and you have got a substantial cost reduction.
25 And this is something they are looking at right now.

1 Q Okay. You were also asked about the extent to
2 which shippers might benefit from service improvements
3 and cost reductions on the railroad. Do you have any
4 experience on the extent to which shippers might benefit
5 because a rail merger permitted a railroad to offer them
6 service improvement?

7 A Well, I do have some experience through two
8 essential areas -- one, some work that we have been
9 doing at A. T. Kearney, specifically forest products
10 manufacturers in the southeast. This is the eastern
11 railroad system. I have found that their rates,
12 post-merger, from one of the systems in the east have in
13 fact declined and have become far more competitive with
14 the motor carrier alternative. And these are for long
15 haul shipments, and in fact to a certain extent it is
16 transportation competition that is motivating this.

17 But in fact, efficiencies of the merger have
18 allowed them in fact to compete more effectively with
19 the motor carriers.

20 The second instance is in fact a
21 publicly-known instance, and that's the BN's ability in
22 the lumber area to compete more effectively with motor
23 carrier on some transcontinental movements from eastern
24 Washington and some movements from Idaho and Montana
25 which have appeared in an article in a magazine that in

1 fact they stated explicitly we want to compete for that
2 traffic which is moving almost 50 percent via motor
3 carrier now.

4 We want that back, and the efficiencies that
5 were generated by the merger with Frisco have in fact
6 allowed us to reduce rates and be more competitive for
7 that traffic. Those are two quick examples.

8 Q Okay. Now the next question I have, did your
9 study consider -- and this is in connection with Mr.
10 Ratner's cross examination -- did your study consider
11 whether this merger would permit the merged railroad to
12 compete better against trucks for movements of
13 aggregates and paper products?

14 A Generally, I looked at a situation, two
15 specifics of note. First, Houston, where in fact the
16 combined system will allow shorter routing, will allow
17 perhaps the development of distribution centers for
18 aggregates which would involve perhaps even unit train
19 type shipments into the distribution center for more
20 local delivery, where in fact the separate systems can't
21 provide that kind of volume and that opportunity.

22 Houston, we all know, is a growing place. The
23 demand for aggregates is significant there.

24 The other opportunity may in fact be Los
25 Angeles. As I understand it, their aggregate supply is

1 being depleted within a reasonable truck range of the
2 city and in fact they are moving east of the San
3 Bernadino mountains to generate a lot of that aggregate
4 to meet their aggregate requirements, and in fact the
5 same situation may exist with the distribution center
6 concept using a highly efficient unit train, trainload
7 volumes, to distribute aggregates locally in that area
8 because I believe we're talking about 130 to 150-mile
9 movements now to obtain aggregates. That will be fairly
10 expensive via motor carriers.

11 So those are two opportunities.

12 Q Do you believe the full range of benefits
13 which you discuss in your verified statement could be
14 achieved by a means other than the railroad merger?

15 A I would say no.

16 Q Why not?

17 A Well, the key in this whole statement
18 regarding bulk commodities is in fact to create a system
19 that within the shippers of these commodities that
20 compete in their own markets served by the Santa Fe and
21 SP a way in which they can combine, and those
22 efficiencies from the combined system may in fact make a
23 stronger opportunity for these shippers to compete in
24 those markets vis-a-vis transportation competition with
25 intermodal alternatives that have in fact displayed a

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1 significant participation in the marketplace.

2 Two separate systems will not be able to
3 provide those efficiencies and in fact do not, in my
4 opinion, provide a good opportunity for strong benefit
5 for this commodity group.

6 MR. WILSON: That's all the redirect I have.

7 JUDGE HOPKINS: Anything further?

8 MR. RATNER: I have a bit of recross on that
9 last point, Your Honor.

10 RECCROSS EXAMINATION

11 BY MR. RATNER:

12 Q Did you investigate the possibility that
13 either Southern Pacific or Santa Fe could merge with
14 another railroad and achieve these benefits?

15 A I did not investigate that possibility.

16 Q Did you consider the possibility that many of
17 these benefits could be provided individually by motor
18 carrier?

19 A I did not investigate that possibility.

20 MR. RATNER: That's all.

21 JUDGE HOPKINS: Any further questions?

22 RECCROSS EXAMINATION

23 BY MR. GREENBERG:

24 Q Following up on that last point, did you
25 investigate the possibility that the same benefits could

1 be provided by another railroad?

2 MR. WILSON: I will object to that question.
3 I did not ask any redirect --

4 JUDGE HOPKINS: There was nothing with respect
5 to your questioning.

6 MR. RATNER: Excuse me. I have one other
7 question.

8 BY MR. RATNER: (Resuming)

9 Q Did you consider the possibility that these
10 benefits could be provided by another railroad either
11 individually or several other railroads combining
12 together to offer this type of service? Is that a no?

13 A That is a no. We evaluated the merged system
14 as it was presented.

15 RE-CROSS EXAMINATION

16 BY MR. BATERA:

17 Q Are you aware that the extent to which imports
18 of bulk commodities can compete is affected by the value
19 of the dollar in relationship to foreign currencies?

20 A Well, I'm not an international economist but
21 yes, it does have an impact.

22 Q And do you know if that relationship between
23 the value of the dollar and foreign currencies will
24 continue into the future?

25 A I couldn't make that kind of projection.

1 MR. BATEBA: Thank you. That's all, Your
2 Honor.

3 JUDGE HOPKINS: Is that all?

4 MR. WILSON: Now move the admission of Mr.
5 Pyle's verified statement.

6 JUDGE HOPKINS: Any objection?

7 (No response.)

8 JUDGE HOPKINS: It will be received in
9 evidence.

10 Did you have something on the record that you
11 wanted, Mr. Kharasch?

12 MR. KHARASCH: If we could be off the record.

13 JUDGE HOPKINS: Off the record.

14 (A discussion was held off the record.)

15 JUDGE HOPKINS: Back on the record.

16 We'll be in recess until 9:00 on Monday in
17 Hearing Room A.

18 (Whereupon, at 12:20 o'clock p.m., the hearing
19 in the above-entitled matter recessed, to reconvene at
20 9:00 o'clock a.m., Monday, October 15, 1984.)